

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Janice Hughes Barnes, &
Individually and as &
Representative of The Estate &
of Ashtian Barnes, Deceased; &
and Tommy Duane Barnes &
&
Plaintiffs, &
&
vs. & CAUSE NO: 4:18-CV-00725
&
Roberto Felix, Jr., And the &
County of Harris, Texas &
&
Defendants. &

ORAL AND VIDEOTAPED DEPOSITION OF

ROBERTO FELIX

FEBRUARY 18, 2019

ORAL AND VIDEOTAPED DEPOSITION OF ROBERTO FELIX,
produced as a witness at the instance of the PLAINTIFFS,
and duly sworn, was taken in the above-styled and
numbered cause on FEBRUARY 18, 2019, from 10:00 a.m. to
3:23 p.m., before Aubrea Hobbs, CSR, RPR, in and for the
State of Texas, reported by computerized machine
shorthand, at the Harris County Attorney's Office, 1019
Congress Avenue, 15th Floor, Houston, Texas, pursuant to
the Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

Roberto Felix

<p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 Mr Howard Fomby, Esq.</p> <p>4 -and-</p> <p>5 Mr. Adam W. Fomby, Esq.</p> <p>6 FOMBY LAW FIRM</p> <p>7 440 Louisiana Street, Suite 900</p> <p>8 Houston, Texas 77002</p> <p>9 E-mail: hfomby@fombylaw.com</p> <p>10 E-mail: adam@fombylaw.com</p> <p>11 FOR THE DEFENDANTS:</p> <p>12 Ms. Mary E. Baker, Esq.</p> <p>13 THE OFFICE OF VINCE RYAN COUNTY ATTORNEY</p> <p>14 1019 Congress, 15th Floor</p> <p>15 Houston, Texas 77002</p> <p>16 E-mail: mary.baker@cao.hctx.net</p> <p>17 ALSO PRESENT:</p> <p>18 Mr. Zach Sigler, Videographer</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>2</p> <p>1 EXHIBITS (Continued)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 14 Photograph 6</p> <p>4 Exhibit 15 Photograph 6</p> <p>5 Exhibit 16 Photograph 6</p> <p>6 Exhibit 17 Photograph 6</p> <p>7 Exhibit 18 Photograph 6</p> <p>8 Exhibit 19 Photograph 6</p> <p>9 Exhibit 20 Photograph 6</p> <p>10 Exhibit 21 Photograph 6</p> <p>11 Exhibit 22 Photograph 6</p> <p>12 Exhibit 23 Photograph 6</p> <p>13 Exhibit 24 Photograph 6</p> <p>14 Exhibit 25 Photograph 6</p> <p>15 Exhibit 26 Photograph 6</p> <p>16 Exhibit 27 Photograph 6</p> <p>17 Exhibit 28 Not Introduced</p> <p>18 Exhibit 29 Not Introduced</p> <p>19 Exhibit 30 Texas Commission on Law Enforcement 18 Personal Status Report</p> <p>20</p> <p>21 Exhibit 31 Message from Terminal/Unit 36</p> <p>22 Exhibit 32 Houston Police Department Homicide 76 Division Witness Statement</p> <p>23 Exhibit 33 Houston Police Department Records 106</p> <p>24</p> <p>25 (Continued)</p>
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	6		8
1	PROCEEDINGS	1	but I want to set the predicate to let him know what the
2	(Exhibits Nos. 1-27 premarked.)	2	process is. That at the end of this I'm going to give
3	THE VIDEOGRAPHER: Today's date is	3	you an opportunity to correct anything that you think
4	February 18th, 2019. The time is approximately	4	needs to be corrected.
5	10:00 o'clock a.m. We're on the record. Will you	5	MS. BAKER: You can do that. I'm going
6	please swear in the witness.	6	to object to your continuing sidebar. You can do that
7	ROBERTO FELIX,	7	when you ask him a question at the end.
8	Having been first duly sworn, testifies as follows:	8	Q. (BY MR. FOMBY) Now, Deputy Felix, could
9	DIRECT EXAMINATION	9	you -- I know that you've already given the name -- your
10	BY MR. FOMBY:	10	name to the court reporter, but for -- on the record
11	Q. Officer Felix, is that the proper way to refer	11	could you please tell us your full name?
12	to you?	12	A. Full name is Roberto Felix, Jr.
13	A. It's Deputy Felix.	13	Q. Okay. And Deputy, where do you reside
14	Q. Deputy Felix, okay. I'm Howard Fomby. I'll	14	currently?
15	be asking some questions today for the plaintiff in this	15	MS. BAKER: I'm going to object to that
16	case, Janice Barnes, the mother of Ashtian Barnes.	16	on the basis of the law enforcement privilege and
17	A. Yes, sir.	17	instruct the witness not to answer. That matter is
18	Q. One of the things that --	18	privileged.
19	MR. FOMBY: Is this coming through okay?	19	Q. (BY MR. FOMBY) Deputy, who do you currently
20	Q. (BY MR. FOMBY) Before we get started, one of	20	work for?
21	the things I wanted to say is that this process is	21	A. I currently work for the Harris County
22	really about getting to the truth, about finding out	22	Constable's Office, Precinct 5.
23	what happened on the 28th of April, 2016. And as	23	Q. And what is your title or position with the --
24	such --	24	A. My title is deputy with Harris County Precinct
25	MS. BAKER: I'm going to object to the	25	5.
	7		9
1	narrative of this deposition. Could you ask a question,	1	Q. Now, I want to talk a little bit about your
2	please?	2	training and preparation for the job that you're at.
3	Q. (BY MR. FOMBY) I -- well, my narrative is	3	A. Yes, sir.
4	that I -- because we're trying to get to that, I want to	4	Q. Did you have any opportunity to complete high
5	be fair to you. So I don't have any intention of	5	school?
6	badgering you or trying to cut you off or change the	6	A. Yes.
7	meaning of your words or any of that sort of thing.	7	Q. And did you go to college on any kind of a
8	Okay?	8	baccalaureate or junior baccalaureate program?
9	A. Okay.	9	A. Yes.
10	Q. And occasionally my wife tells me that I say	10	Q. And what high school did you attend?
11	things that I think I understand and she thinks it's all	11	A. I attended Willowridge High School.
12	garbled. So with that being in mind, if I say something	12	Q. And you graduated from that high school; is
13	you don't understand at any point, or that you need more	13	that right?
14	clarification, I want to ask you to just stop me and --	14	A. I did.
15	and let me know, okay? If I say something that you	15	Q. And how about college? Which college did you
16	didn't hear completely, then stop me and let me know and	16	attend, or colleges?
17	I'll repeat it, okay?	17	A. I attended Houston Community College and San
18	A. Okay.	18	Jacinto College.
19	Q. Because this process doesn't work well unless	19	Q. And did you receive a degree from either of
20	we're fair with each other. And at the end of this	20	those?
21	whole process I'm going to give you an opportunity if	21	A. Not -- not as of now, no.
22	you want, in my experience people --	22	Q. Okay. So I have a -- sort of a resume that
23	MS. BAKER: Object to sidebar. Please	23	was provided by the Texas Commission on Law Enforcement
24	ask a question, Mr. Fomby.	24	and it says that you started work with the Harris County
25	MR. FOMBY: I am going to ask a question	25	Sheriff's Office in July of 2003; is that correct?

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1 A. I believe it was June. 2 Q. Okay. And prior to working as a jailer, did 3 you have any other kinds of employment? 4 A. Yes. 5 Q. And -- and what were those jobs? 6 A. I -- a job prior to that was at an advertising 7 agency. 8 Q. And what did you do for them? 9 A. I did numerous different things including mail 10 room, answering phones and assisting in advertisement 11 approvals. 12 Q. And after you left the advertising agency, is 13 that when you went to work for the Harris County 14 Sheriff's Department? 15 A. Yes. 16 Q. And as -- it says here that you were a jailer. 17 Is that the correct title? 18 A. Detention officer. 19 Q. Detention officer. And as a detention 20 officer, what were your duties? 21 A. To maintain security of a facility and 22 supervise the inmates. 23 Q. And from that point what -- what was your next 24 position after you stopped being a jailer? 25 A. I was a deputy with Harris County Precinct 5.	10 1 certificates? 2 A. I've received numerous certificates. 3 Q. Okay. So what kind of certificates have you 4 received in your career as a peace officer? 5 A. Too many to recall at this time, but I've 6 been -- advanced peace officer certification, I received 7 certifications in numerous other aspects, like DWI 8 investigation and -- just too many to -- to name 9 or recall. I've done, you know, animal investigation, 10 K9 encounters is what's it's called. 11 I've done field training officer. I've done 12 accident investigation, accident reconstruction along 13 with, like I said, numerous, numerous that don't come to 14 mind right now. 15 Q. Okay. So all of those, are those classes that 16 you took and completed to get the certificate? 17 A. That's correct. 18 Q. Okay. Now, did you take any classes at the 19 University of Houston downtown in training to be a peace 20 officer? 21 A. Yes. That was the police academy that I 22 attended for my certification. 23 Q. Okay. And how long is that particular course? 24 A. The course that I attended ran from January 25 through August.	11 1 Q. And approximately when did you start as a -- 2 as a deputy? 3 A. I started with the Harris County Constable's 4 Office on October 2nd, 2004. 5 Q. When you first started with Harris County 6 Precinct 5, what was your title at that point? 7 A. It was a deputy. 8 Q. Okay. Are there levels of deputies? 9 A. Well, there's a deputy 5 I believe and then it 10 goes down in numbers as your years of service with the 11 department. 12 Q. Okay. When you say it goes down a number, 13 that means -- 14 A. So deputy 4, 3 -- 15 Q. -- is a 5 the highest or lowest? 16 A. The lowest. 17 Q. So when you started you would start as a level 18 5? 19 A. Give me a second. Actually I'm not too sure 20 about that at this time, but I believe that's how it -- 21 how it descends. 22 Q. And what level are you currently? 23 A. I am a deputy 1, I believe. 24 Q. Okay. And have you earned -- at -- in the -- 25 the Constable's Office, have you earned any particular	12 1 Q. So approximately seven to eight months long? 2 A. That's correct. 3 Q. And do they track that by way of hours, course 4 hours that you took? 5 A. They do. 6 Q. Do you know how many course hours you took to 7 become a peace officer? 8 A. I cannot recall at this time. 9 Q. What kind of coursework did you take at the 10 University of Houston downtown to become a peace 11 officer? 12 A. The standards set by TCOLE, which is, you 13 know, Penal Code, you know, traffic, mechanics of 14 arrest, you know, building searches. There's a CCP and 15 anything else that's required by the TCOLE. 16 Q. Okay. And in taking those courses, did they 17 teach you any courses -- any -- was there any coursework 18 in that training on constitutional rights of citizens 19 and defendants? 20 A. There is a segment of when we're doing case 21 law per training to CCP and the Penal Code. 22 Q. Okay. And so in the course of that training, 23 did you receive any training specifically in 24 constitutional prohibition against illegal search and 25 seizure?	13
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1 A. Yes. 2 Q. And what is your understanding about what the 3 constitution says about illegal searches? 4 MS. BAKER: Objection, vague, calls for a 5 legal conclusion, but you may answer. 6 A. For illegal search and seizures? Is that your 7 question? 8 Q. (BY MR. FOMBY) Yes. 9 A. Okay. We have the right to -- to -- give me a 10 second, sorry. The Fourth Amendment to unreasonable 11 searches and seizures. 12 Q. Okay. And in conducting a search, can you 13 conduct a search without a warrant? 14 MS. BAKER: Objection, calls for a legal 15 conclusion and vague and overly broad, but you may 16 answer. 17 THE WITNESS: Okay. 18 A. There are situations where you can conduct a 19 search without a warrant. 20 Q. (BY MR. FOMBY) As a police officer or deputy, 21 were you trained in what those exceptions are? 22 A. Yes. 23 Q. Do you recall what the exceptions were that 24 you were trained in? 25 A. Repeat your question.	14 1 MS. BAKER: So what was your question? 2 A. De-escalation. 3 Q. (BY MR. FOMBY) De-escalation? 4 A. Yes. 5 Q. Would the date that you first took a class in 6 de-escalation techniques be somewhere around the end of 7 August of 2018? 8 A. That was the last class that we -- we took. 9 Q. I'm going to show you, Deputy, the document 10 that we were given by the Texas Commission on Law 11 Enforcement. This is their listing. 12 MR. FOMBY: I -- I'll get it. 13 Q. (BY MR. FOMBY) This is their listing of the 14 coursework that you've taken. 15 MR. FOMBY: I'll have to remember to 16 unclip this next time. 17 THE VIDEOGRAPHER: No problem. 18 A. (Witness examines document.) 19 Q. (BY MR. FOMBY) Okay. Have you had an 20 opportunity to review it? 21 MS. BAKER: Actually, for the record, 22 this document has our Bates number on it, so -- so you 23 may have gotten a separate document from the Texas 24 Commission on Law Enforcement. This -- this one that 25 you're showing the witness is Bates numbered with the
15 1 Q. Do you recall what those exceptions are from 2 your training? 3 A. Well, there's just numerous that were gone 4 over, but it would be reasonable suspicion that, you 5 know, something is -- could or would -- would happen. 6 Q. And when you say that something could or would 7 happen -- 8 A. A crime. 9 Q. -- do you mean a crime? 10 A. A crime. 11 Q. Okay. Deputy, have you ever taken a class on 12 escalation of force? 13 A. Yes. 14 Q. And when was -- when did you first take that 15 class? 16 A. I cannot recall at this time. 17 MS. BAKER: Was that escalation or 18 de-escalation? 19 MR. FOMBY: De-escalation. 20 THE WITNESS: I'm sorry. 21 MS. BAKER: Okay. You said escalation. 22 MR. FOMBY: Well, escalation and 23 deescalation would be opposite sides the same point. 24 MS. BAKER: Yes, I understand that. 25 MR. FOMBY: So de-escalation.	17 1 Harris County Bates numbers. 2 MR. FOMBY: Absolutely. 3 Q. (BY MR. FOMBY) To be clear, this document 4 comes from your attorneys. 5 MS. BAKER: Yes. 6 Q. (BY MR. FOMBY) And were provided as part of 7 discovery -- 8 MS. BAKER: Yes. 9 Q. (BY MR. FOMBY) -- pursuant to our request for 10 information on your training. 11 MS. BAKER: Correct. I may have 12 misunderstood you, but I thought you said we obtained it 13 from the Texas Commission on Law Enforcement. 14 MR. FOMBY: Exactly. 15 Q. (BY MR. FOMBY) And I'm sorry for that, and my 16 co-counsel reminded me to make that clear. 17 MS. BAKER: Are you going to mark that? 18 Are you going to mark that? 19 MR. FOMBY: Yes, we will. 20 MS. BAKER: Okay. 21 A. (Witness examines document.) Okay. 22 Q. (BY MR. FOMBY) Okay, Deputy. Now I'm going 23 to ask you to -- starting with page 1, is there anything 24 on page 1 that talks about a class that you took in 25 de-escalation techniques?

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1 MS. BAKER: I just -- I apologize for 2 objecting so much, but I just feel very uncomfortable 3 with being asked about page 1 without it being marked. 4 So could we mark this? 5 MR. FOMBY: Certainly. Can you have this 6 marked as Exhibit -- 7 THE REPORTER: It's going to be 30. 8 MS. BAKER: Thank you. And how does it 9 get to be 30? 10 (Exhibit No. 30 marked.) 11 Q. (BY MR. FOMBY) On the page 1 of this where 12 it's Bates HC/Barnes-1721 at the bottom, is there 13 anything on that page that discusses classes in 14 de-escalation techniques? 15 A. No, there's not. 16 Q. Okay. Turning to the next page Bates marked 17 1722, is there anything there that lists a class that 18 you took in de-escalation techniques? 19 A. Yes. 20 Q. And is it -- does it list a particular date 21 you took that? 22 A. Course date is August 23rd, 2018. 23 Q. Are there any other references to 24 de-escalation techniques classes on that page? 25 A. Specific for de-escalation, no, but the	18 20 1 device update, that is a -- is that a regular update 2 course? 3 A. That's correct. That's the update after the 4 original -- the original taser class was done. 5 Q. Okay. And that class would teach you on how 6 appropriately -- properly to use a taser as an 7 alternative to -- alternative to more lethal forms? 8 A. Correct. 9 Q. Correct, okay. Let's move to the next page, 10 1724. And again, the same question. Is there any class 11 listed, any training class listed on this page that's 12 specific to de-escalation techniques? And in this -- 13 there is -- I know there are other classes on less 14 lethal control, the taser reoccurring training. 15 A. Uh-huh (Affirmative.) 16 Q. But other than that -- 17 A. Yes. 18 Q. -- any other classes? What classes would that 19 be? 20 A. It's going to be the baton. 21 Q. Okay. 22 A. The firearms. 23 Q. And similar in those cases to the taser, 24 you're being taught how to use alternative weapons as -- 25 weapons as an alternative to using lethal force?
19 1 class -- some classes that are taught, the de-escalation 2 technique is taught in those classes as well. 3 Q. Okay. But in particular, de-escalation 4 techniques, are there any other classes that you took 5 specifically for de-escalation techniques listed on that 6 page? 7 A. No. 8 Q. Let's look at the next page Bates marked 1723. 9 Is -- are there -- is there any coursework on this page 10 that is specific to de-escalation techniques? 11 A. That says a title or that corresponds with the 12 de-escalation techniques itself? 13 Q. What's that? 14 A. I said the title or the teaching of the 15 de-escalation techniques? 16 Q. Any classes specifically oriented toward 17 de-escalation techniques? 18 A. Yes. 19 Q. Which class is that? 20 A. It's going to be the less lethal electronic 21 control device. 22 Q. And that, that would be taser training, is 23 that an easier way? 24 A. Correct. 25 Q. Okay. So in less lethal electronic control	21 1 A. When appropriate. 2 Q. And what were the dates of your baton and 3 firearms classes? 4 A. That was in June 7, 2013 and February 11th of 5 2013. 6 Q. Moving to the next page, 1725, again, the same 7 question. Are there any classes that are specific to 8 de-escalation techniques? 9 A. Yes. 10 Q. And what classes would those be? 11 A. It's going to be the use of force, 12 intermediate core course. 13 THE REPORTER: What was that second part? 14 THE WITNESS: Intermediate core course. 15 A. I can say traffic as well, and... 16 Q. (BY MR. FOMBY) Okay. And those classes, what 17 years were those classes taken in? 18 A. The year is going to be in -- also, I'm sorry, 19 did I say use of force? 20 THE REPORTER: Could you speak up, 21 please? I'm sorry. 22 A. Did I say use of force? There's use of force 23 and then there's use of force intermediate, so there's 24 two classes. One in 2011 and one in 2010. 25 Q. (BY MR. FOMBY) There's also -- there are

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22 <p>1 actually three use of force classes on that page written 2 on? 3 A. Okay. There is. 4 Q. Okay. Moving on to page 1726. Same question. 5 Any classes there that are specific to de-escalation 6 techniques? 7 A. There's the use of force intermediate core 8 course, there is -- and the crisis intervention 9 training. 10 Q. And what years were those courses? 11 A. In 2009 and 2007. 12 Q. And on page 17, Bates number 1727, same 13 question. Any classes that are specifically dedicated 14 to de-escalation techniques? 15 A. There's the crisis intervention training in 16 2005. 17 Q. Okay. Is that it? 18 A. I believe so, yes. 19 Q. So in looking at these, Deputy, you've 20 mentioned a number of classes that involve particular 21 types of weapons. 22 A. Uh-huh (Affirmative.) 23 Q. You've mentioned a number of classes that 24 involve a variety of situations, but how many classes 25 have you taken that are dedicated only to de-escalation</p>	24 <p>1 A. K9 encounters. 2 Q. How about the next class? 3 A. Field training officer. 4 Q. Okay. So other than the training classes, 5 from the time of the shooting through the next year, are 6 there any classes that involve de-escalation of force, 7 de-escalation techniques? 8 MS. BAKER: Objection, vague. You may 9 answer if you understand the question. 10 A. Can you repeat the question? 11 Q. (BY MR. FOMBY) Sure. From 2010 [sic] 2016 to 12 June the 1st of 2017, other than the taser updates, did 13 you take any classes on de-escalation of force? 14 A. No. 15 Q. In that same time period, did you take any 16 classes about the policies of the use of force? 17 MS. BAKER: Objection, vague. I don't 18 know what you're talking about. 19 Q. (BY MR. FOMBY) Did you take any classes other 20 than the class on the taser update? Did you take any 21 classes during that period that involved the appropriate 22 use of force? 23 A. Okay. Can you clarify that question again? 24 I'm sorry. 25 Q. Sure. Okay. From 2010 -- 2000 -- sorry.</p>
23 <p>1 techniques? 2 MS. BAKER: Objection, vague. 3 Q. (BY MR. FOMBY) You can answer. 4 MS. BAKER: Oh, I'm sorry. Yes. 5 THE WITNESS: Okay, I apologize. 6 MS. BAKER: I'm sorry. Unless I instruct 7 you -- 8 THE WITNESS: Okay. 9 MS. BAKER: I'm objecting for the record. 10 A. That would be the class that was done in 11 August of 2018 as a mandated course by TCOLE. 12 Q. (BY MR. FOMBY) Let's turn back to page 1723 13 and move down to the lower -- about two thirds of the 14 way down. This Ashtian Barnes, the shooting of Ashtian 15 Barnes occurred on April the 28th, 2016. What was the 16 next class that you took in terms of training after that 17 shooting? 18 A. It was the Lidar radar training. 19 Q. All right. After that what was the next class 20 that you took? 21 A. It was the less lethal electronic control 22 device update. 23 Q. And that again would be a taser update? 24 A. Taser. 25 Q. Okay. What was the next class?</p>	25 <p>1 2-10-2016, which was before the shooting, to we'll take 2 it all the way out to the end of this course block, 3 August 7, 2017, other than your taser update class, did 4 you take any classes that involved the appropriate use 5 of force? 6 A. Patrol rifle could be considered, you know, a 7 use of force class or -- 8 Q. What did you learn in patrol rifle? 9 MS. BAKER: Objection, vague. 10 Q. (BY MR. FOMBY) What was the nature of the 11 class -- of the coursework for patrol rifle? 12 A. Patrol rifle was techniques, accuracy and 13 deploying a rifle in situations. 14 Q. Okay. Other than that and the taser class, in 15 that period of time, did you take any classes that 16 specifically dealt with appropriate use of lethal force? 17 A. No. 18 Q. Now, Deputy, this particular incident on 19 April 28th, 2016 began with a traffic stop, right? 20 A. That's correct. 21 Q. Can you walk me through -- let's walk through 22 the phases of a traffic stop. 23 A. Okay. 24 Q. Okay? Starting with you have some -- you're 25 given some indication of a reason to pull someone over?</p>

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1 A. Yes. 2 Q. And that may be that you see them speeding, 3 you may see them driving erratically, but for whatever 4 reason, you observe or something is communicated with 5 you that says you need to pull this person over. What's 6 the next thing -- as soon as you do that and you know 7 that you need to pull someone over, what's the next 8 thing you do? 9 MS. BAKER: I'm going to object to that 10 question as vague, but that being said, you may answer. 11 THE WITNESS: Okay. 12 A. It depends. 13 Q. (BY MR. FOMBY) Okay. 14 A. Now, once the indication is given there by, 15 you know, myself or dispatch, then the next step is to 16 follow the vehicle, you know, run the license plate and, 17 you know, put yourself on the computer for a traffic 18 stop. 19 Q. So when you say that you run the license 20 plate -- excuse me -- and you put yourself on the 21 computer, do you -- do you have a computer in your squad 22 car? 23 A. Yes. 24 Q. Okay. And when you say "run the license 25 plate," what does that mean? What are you doing with	26 1 were given the identification of the -- of the license 2 plate; is that correct? 3 A. That's correct. 4 Q. And who gave that to you? 5 A. That was the Harris County Toll Road Authority 6 dispatch. 7 Q. Okay. And you were told -- were -- were you 8 given a description of the car as well to look for? 9 A. That's correct. 10 Q. Okay. So when you received that information 11 about Ashtian Barnes' Toyota, what did you do next? 12 A. When I received the information from dispatch 13 of the vehicle in question, I tried to look for the 14 vehicle in traffic and spotted the vehicle. 15 Q. And did you, in fact, locate the vehicle in 16 traffic? 17 A. Yes. 18 Q. And where was his car? 19 A. At the time of me locating the vehicle, the 20 vehicle was traveling southbound right around Bellaire, 21 I believe. 22 Q. Okay. What lane was he in? 23 A. I believe he was in lane one. 24 Q. And that would be the -- the lane closest to 25 the middle of the road, the middle -- the left-hand
27 1 the license? 2 A. That means you're checking the license plate. 3 Q. Okay. 4 A. Whenever it's feasible or possible to do so at 5 that time. 6 Q. Okay. And when you run a license plate on 7 your computer, what kind of information does it give you 8 back? 9 A. It could be numerous types of information. 10 Registration, whether it's a stolen vehicle, if there's 11 any wanted hits or wanted persons depending on the type 12 of information that's entered by either a police agency 13 or -- or DPS. 14 Q. So you say it checks registration. Would that 15 generally tell you who owned the car? 16 A. It tells you who the car is registered to. 17 Q. Okay. Then you say "put yourself on the 18 computer for a traffic stop." What -- what is that 19 about? 20 A. Okay. So whenever we conduct a traffic stop, 21 that's how we dispatch to see your location, which could 22 include the license plate number of the vehicle, the 23 vehicle description and your location of the traffic 24 stop. 25 Q. So going back to this particular case, you	28 1 side? 2 A. Lane one would be the left lane, and then any 3 lanes to the right of that would be sequential number 4 two, two to one. 5 Q. At what point in a traffic stop like this do 6 you turn on your lights -- your turn on your lights? 7 A. When I'm trying to get behind the vehicle or 8 when I'm directly behind the vehicle. 9 Q. Okay. And is it -- is it fair to say that the 10 reason for turning on the lights is to signal that 11 particular driver that you want -- that you're after 12 that person? 13 A. It's -- it's to make them aware I'm behind 14 them to either pull over or stop. 15 Q. Right. Okay. Now you also have a siren? 16 A. That's correct. 17 Q. So when would you -- did you use a siren in 18 this case? 19 A. No, I did not. 20 Q. Okay. When would you use a siren? 21 A. When the driver fails to pull over or stop or 22 to get their attention. 23 Q. Now in this particular case, you maneuvered 24 behind, you located Ashtian Barnes in the Toyota in lane 25 one on the tollway, and maneuvered behind him and turned

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<p style="text-align: right;">30</p> <p>1 on your lights; is that correct?</p> <p>2 A. What I said was I believe he was in lane one, 3 yes.</p> <p>4 Q. And so when you turned on your lights, did 5 Ashtian Barnes attempt to at that point speed up and 6 drive away?</p> <p>7 A. No, he did not.</p> <p>8 Q. Did Ashtian Barnes exhibit any kind of 9 movement within the lane that showed that he might not 10 be in complete control of his vehicle?</p> <p>11 A. No.</p> <p>12 Q. And by that I mean you've seen drunk drivers. 13 Did he drive like he was drunk or impaired at that 14 point?</p> <p>15 A. No.</p> <p>16 Q. Okay. So you turned on your lights, how long 17 did it take for Ashtian Barnes to respond to your lights 18 coming on and start braking?</p> <p>19 MS. BAKER: Objection, calls for 20 speculation.</p> <p>21 Q. (BY MR. FOMBY) Approximately.</p> <p>22 A. Within seconds.</p> <p>23 Q. Okay. So in your experience that's a normal 24 response. You see a flash, you check it, you go oh no, 25 I'm being pulled over and then you start pulling --</p>	<p style="text-align: right;">32</p> <p>1 Q. Okay. It could be different if you have one 2 of those little squish cars, right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. So at that point you've got a car 5 stopped, you've entered into the computer that you have 6 initiated a traffic stop. What's the next thing that 7 you do before you would leave the car, the squad car?</p> <p>8 A. I advise dispatch of my location.</p> <p>9 Q. And at that point you would step out of the 10 squad car?</p> <p>11 A. Yes.</p> <p>12 Q. Are there some procedures that you are taught 13 to follow to protect you from traffic?</p> <p>14 MS. BAKER: Objection, vague.</p> <p>15 Q. (BY MR. FOMBY) In approaching a stopped 16 vehicle on the side of the road with cars flying by at 17 65, 70 miles an hour, are there procedures that you're 18 taught to follow, to keep your -- you and the individual 19 in front of you from being hit?</p> <p>20 A. We approached the --</p> <p>21 THE VIDEOGRAPHER: I'm sorry, it was just 22 causing a lot of feedback. Sorry.</p> <p>23 MR. FOMBY: Let me take this off. This 24 might help you.</p> <p>25 Q. (BY MR. FOMBY) I'm sorry, Deputy.</p>
<p style="text-align: right;">31</p> <p>1 slowing down; is that --</p> <p>2 MS. BAKER: Object to the form.</p> <p>3 A. Yes.</p> <p>4 Q. (BY MR. FOMBY) Okay. And some drivers don't 5 do that; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. But in this case, Ashtian Barnes 8 responded about as quickly as you're used to drivers 9 responding; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And once he started pulling over, did he -- 12 which lane did he pull into to stop?</p> <p>13 A. He pulled into the left shoulder.</p> <p>14 Q. Okay. And in fact, he came to a stop; is that 15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. So the two of you were stopped on the shoulder 18 of the road. He's in front of you; is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. About how far was his -- the rear of 21 his car from the front of your car at that point?</p> <p>22 A. I would say about a car's length.</p> <p>23 Q. Okay. And that would be depending on the car, 24 ten, 12 feet?</p> <p>25 A. Approximately.</p>	<p style="text-align: right;">33</p> <p>1 A. Okay. So we exit the vehicle, we approach the 2 non traffic side when possible.</p> <p>3 Q. Okay. And is that what you did in this case?</p> <p>4 A. Yes.</p> <p>5 Q. Normally when you approach a driver, do you 6 try to get their attention?</p> <p>7 MS. BAKER: Objection, vague.</p> <p>8 A. No. When I approach a driver, I'm looking at 9 them, not them trying to look at me.</p> <p>10 Q. (BY MR. FOMBY) Okay. How do you get their 11 attention to get them focused on you?</p> <p>12 A. Well, once I approach the vehicle to the 13 either driver or passenger door, whatever side I'm 14 making contact with them, I look in the window or knock 15 on the window to make contact with them.</p> <p>16 Q. And when you look in the window, are you 17 looking not just at the passenger but to get a sense of 18 what's going on in the car?</p> <p>19 A. That's correct.</p> <p>20 Q. That's part of your training?</p> <p>21 A. That's correct.</p> <p>22 THE VIDEOGRAPHER: Mr. Fomby, could you 23 just clip it on all the way. I'm sorry. That'll do it.</p> <p>24 Perfect. Thank you.</p> <p>25 MR. FOMBY: Okay.</p>

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<p style="text-align: right;">34</p> <p>1 Q. (BY MR. FOMBY) So in this case, you walk up 2 to the window and you get Ashtian Barnes' attention. Is 3 his window up or down at this point?</p> <p>4 A. His window was down.</p> <p>5 Q. Okay. Was it down the entire time that you 6 observed the vehicle or did he lower it?</p> <p>7 A. It was down when I approached the vehicle. 8 I'm going to correct myself. I believe it was down, not 9 all the way, but it was down to where I could hear him, 10 he could hear me.</p> <p>11 Q. Okay. When you approached the vehicle at that 12 point, did you happen to see any kind of smoke or 13 anything else coming out of the window?</p> <p>14 A. No.</p> <p>15 Q. As you're approaching the vehicle from the 16 rear of the vehicle, at that point did you happen to 17 smell any strange odors?</p> <p>18 MS. BAKER: Objection, vague.</p> <p>19 A. Not from approaching the vehicle, once I was 20 at the driver's side window.</p> <p>21 Q. (BY MR. FOMBY) Okay. So you're standing 22 beside Ashtian Barnes at the driver's side window and 23 what's the first thing that you ask him for?</p> <p>24 A. Well, the first thing I do is I introduce 25 myself, let him know who I was and why he was being</p>	<p style="text-align: right;">36</p> <p>1 A. Not necessarily. The person responds 2 sometimes when you're getting the information, respond 3 by either saying it's not my car, it's a rental, but 4 until that fact is checked out, then we proceed with 5 the -- the investigation or issuing of any citations at 6 that point.</p> <p>7 Q. Okay. Now you said that at the beginning of 8 this traffic stop, you would check on the registration 9 of the vehicle; is that correct?</p> <p>10 A. When -- when possible.</p> <p>11 Q. Okay. And did you, in fact, receive the 12 information before you left the vehicle as to who the -- 13 who the car was registered to?</p> <p>14 A. No.</p> <p>15 Q. Did you check on that before you left?</p> <p>16 A. No.</p> <p>17 Q. Would that normally be available to you or on 18 your computer screen in your car?</p> <p>19 A. Sometimes.</p> <p>20 Q. Okay. I'm showing you what we have received 21 in discovery. It's Bates stamped -- it's upside down. 22 I think 198.</p> <p>23 MR. FOMBY: Can we enter this as 31?</p> <p>24 (Exhibit No. 31 marked.)</p> <p>25 MS. BAKER: Can we -- could we go off the</p>
<p style="text-align: right;">35</p> <p>1 stopped. At that point I asked him -- he actually 2 interrupted and said that it was a rental car.</p> <p>3 Q. Now, when you say that he interrupted you, 4 were you telling him that he was being stopped for a 5 toll tag violation?</p> <p>6 A. That is correct.</p> <p>7 Q. So when he responded then, it was not just a 8 random response, it was informing you that this was a 9 rental car so that might not -- that he might not be 10 responsible for the toll tag problem?</p> <p>11 MS. BAKER: Objection, calls for 12 speculation.</p> <p>13 Q. (BY MR. FOMBY) Is that fair to say?</p> <p>14 MS. BAKER: Objection, calls for 15 speculation.</p> <p>16 A. Okay. Repeat your question.</p> <p>17 Q. (BY MR. FOMBY) Did it -- did it appear to you 18 that his interrupting you with oh, this is a rental car, 19 was unrelated to the -- to the -- what you were telling 20 him at the time?</p> <p>21 A. No.</p> <p>22 Q. Okay. Because if it was a rental car, that 23 would be directly related to whether or not he was 24 personally guilty of any outstanding tolls; is that 25 correct?</p>	<p style="text-align: right;">37</p> <p>1 record for one second? I have a question for you. So 2 can we go off the record?</p> <p>3 THE VIDEOGRAPHER: Would you like to go 4 off the record, Mr. Fomby?</p> <p>5 MR. FOMBY: Yes. That's fine.</p> <p>6 THE VIDEOGRAPHER: The time is 7 approximately 10:45 a.m. We're off the record. 8 (Off the record.)</p> <p>9 THE VIDEOGRAPHER: The time is 10 approximately 10:53 a.m. We're on the record.</p> <p>11 Q. (BY MR. FOMBY) Now -- okay. Now before we 12 continue, some questions were raised -- a concern raised 13 about the premarked exhibits here. These are simple 14 screenshots taken off of a video that was provided under 15 discovery by opposing counsel. They have a copy of the 16 video, we have a copy of the video. The video is very 17 difficult to see from the standpoint of, you know, when 18 things specifically happened, so we've printed these 19 off. We are going to provide a copy of each of these 20 that we're going to show today to opposing counsel. 21 They're being offered for the purposes of not 22 necessarily evidentiary but for purposes of helping you 23 understand what's going on and explaining what's going 24 on at various points during the traffic stop and 25 thereafter. Okay.</p>

<p>1 MS. BAKER: Thank you for that 2 explanation, Mr. Fomby, and I appreciate that. And a 3 question I have is, are these in sequential order? Do 4 you have any representations about that? In other 5 words, do they skip around, is there some reference by 6 which we can understand like whether some parts were 7 skipped or they're nonsequential or are they sequential? 8 MR. FOMBY: These photos will be offered 9 in sequential order. There is a time stamp on the 10 bottom of each photograph -- 11 MS. BAKER: Okay. Perfect. 12 MR. FOMBY: -- that shows that. In 13 addition, when any of the events happen within fractions 14 of a second, but by looking at the automobiles on the 15 opposite side of the road coming this way, you can 16 actually see the same car moving in sequence. 17 I haven't printed every single one of 18 these pictures that go through the entirety of the 19 timeframe because that would be several thousand photos, 20 but they are effectively for the times when the 21 timeframes were very tight there. Every fraction of a 22 second you'll see that. 23 Then later when several minutes go by 24 you'll see that, but the time stamp will be there. So 25 the fractions of a second at that point no longer matter</p>	<p>38</p> <p>1 times that we've, you know -- that I don't get returned 2 until the end of the day sometimes or 30 minutes later, 3 depending on the way the computer system is running. 4 So I'm not going to have you standing on the 5 side of the road for 30 minutes, five minutes, making -- 6 before making contact, you know, waiting on the return. 7 Q. Okay. In this case where you stopped someone 8 for a toll violation, was there any particular reason 9 why you needed to not wait, that you needed to take 10 action and make contact before you got the information 11 back? 12 A. There was no -- I'm sorry, repeat your 13 question. 14 Q. In this case where you're stopping someone for 15 a purported toll tag violation -- 16 A. Uh-huh (Affirmative.) 17 Q. -- for unpaid toll, was there any particular 18 reason why you needed to immediately make contact 19 with the driver? 20 A. The contact was made because when a vehicle is 21 put over our dispatch that's a prohibitive vehicle, they 22 have the information already, who the registered owner 23 is on their end. So we don't wait for the return 24 sometimes because the dispatch does have that 25 information already.</p>
<p>1 and the time stamps are there. 2 MS. BAKER: So if I understand what 3 you're saying, we'll be able to match it to the video by 4 the time stamping? 5 MR. FOMBY: Exactly. 6 MS. BAKER: Okay. Perfect. Thank you. 7 MR. FOMBY: Certainly. 8 Q. (BY MR. FOMBY) Getting back to this document, 9 we were talking about the -- who the -- the Toyota 10 Corolla that Ashtian Barnes was driving was registered 11 to. 12 A. Uh-huh (Affirmative.) 13 Q. And you said that you had an ability to pull 14 that information in your car, but for whatever reason 15 you did not do so in this case? 16 A. Yeah. It could be a reason where it doesn't 17 come through in a timely manner. Even though we run it, 18 it might take a few seconds or a few minutes sometimes 19 to actually get the return. 20 Q. Okay. If you're doing a traffic stop on the 21 side of the road, though, and you do not have a partner, 22 would it not be more prudent to wait until you got that 23 information so you understand who you're stopping? 24 A. Sometimes we cannot wait for -- for the return 25 because we have to make contact immediate -- there's</p>	<p>39</p> <p>1 Q. Okay. So you're talking to the dispatcher at 2 this point, particular point, Deputy, and you say that 3 you -- they already have the information. Wouldn't it 4 be prudent at that point for you to simply ask them to 5 tell you the information? 6 A. Well, before making contact with the vehicle, 7 you know, I don't know if the person on the registration 8 is going to be the owner of the vehicle, the relative of 9 a vehicle, a friend of the person who owns the vehicle, 10 so it's not, you know, necessarily the information on 11 the registration that's always accurate. The 12 information that we go based on the registration is just 13 the -- the month and day of the expiration of the -- of 14 the registration. 15 Q. Okay. I understand that, Deputy. You are 16 suggesting that you might have to wait 30 minutes or 17 even till the end of the day to get the information on 18 who the car was registered to, but that's not true, is 19 it? 20 A. No. What I -- 21 Q. Yes? 22 A. What I said was that sometimes the 23 registration doesn't come back, not that we wait for it. 24 Q. Did you ask the dispatcher what -- if they had 25 the information about who the car was registered to</p>

<p>1 before you left your squad car?</p> <p>2 A. At that time it wasn't necessary for me to do</p> <p>3 so.</p> <p>4 Q. Okay. And according to the document that's</p> <p>5 Bates stamped I think 198 in front of you that was</p> <p>6 provided in discovery, who --</p> <p>7 MR. ADAM FOMBY: That's our discovery.</p> <p>8 MR. FOMBY: Excuse me?</p> <p>9 MR. ADAM FOMBY: That's our discovery.</p> <p>10 MR. FOMBY: Okay.</p> <p>11 Q. (BY MR. FOMBY) And according to this</p> <p>12 document -- document that's been marked 31, who would</p> <p>13 that car be registered to?</p> <p>14 A. The owner is The Mint Leasing, Inc.</p> <p>15 Q. Okay. And who is the current registration?</p> <p>16 A. That is the current registration owner.</p> <p>17 Q. How about the name underneath it, the rental</p> <p>18 car agency?</p> <p>19 A. Okay. It says "On Time Car Rental."</p> <p>20 Q. Okay. So when you approached Ashtian Barnes</p> <p>21 and he informed you that this was a rental car, that</p> <p>22 would be consistent with what the Texas automobile</p> <p>23 registration records show; is that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Do you know how old the toll violation was?</p>	<p>42</p> <p>1 imagine it goes against my EZ TAG account?</p> <p>2 A. That's correct.</p> <p>3 Q. And it's pulled. If I don't have one of those</p> <p>4 and it only reads my license plate, what does the toll</p> <p>5 authority do with that information?</p> <p>6 A. To my knowledge what I understand happens is</p> <p>7 they -- it goes into the system for -- as a toll</p> <p>8 violation.</p> <p>9 Q. Does it go into the system as a toll</p> <p>10 violation? Because the sign up there says that I can</p> <p>11 pay by -- by mail and it's -- it's taking a picture of</p> <p>12 my plate; isn't that correct?</p> <p>13 A. I'm not sure what sign you're referring to.</p> <p>14 Q. Well, there are -- there are lanes that are</p> <p>15 for EZ TAG?</p> <p>16 A. Correct.</p> <p>17 Q. And then there are other lines -- lanes where</p> <p>18 I -- where it takes a picture of my plate and can charge</p> <p>19 me because of my plate number; isn't that correct?</p> <p>20 MS. BAKER: Objection, vague.</p> <p>21 A. Each -- each lane, toll lane, whether it's EZ</p> <p>22 TAG or pay later, has cameras. Each vehicle that goes</p> <p>23 through those -- those lanes, it takes a picture of your</p> <p>24 license plate whether you have an EZ TAG or not. Now if</p> <p>25 you don't pay, then, you know, within ten days, then</p>
<p>43</p> <p>1 A. I do not recall.</p> <p>2 Q. Before we go further into this, I want to talk</p> <p>3 for a second about toll violations. There are -- when</p> <p>4 you drive on a -- on a tollway in Texas, EZ TAG on the</p> <p>5 Sam Houston Tollway.</p> <p>6 A. Uh-huh (Affirmative.)</p> <p>7 Q. How many different ways are there for the EZ</p> <p>8 TAG organization to identify a car?</p> <p>9 A. There's several ways. By the license plate,</p> <p>10 by an actual EZ TAG, by a Texas tag, by another region</p> <p>11 EZ TAG that I do not recall the name right now. I think</p> <p>12 it's like north, northwest Dallas or something like</p> <p>13 that, and then that -- those would be the most I guess</p> <p>14 common.</p> <p>15 Q. And if you don't have a Tex tag or EZ TAG or</p> <p>16 one of those RFID chips in your car, you're saying that</p> <p>17 they can take a picture of your license plate?</p> <p>18 A. It takes a picture of your license plate, yes.</p> <p>19 Q. And once they have a picture of your license</p> <p>20 plate and they catch you driving on the tollway, what</p> <p>21 does the tollway authority do with that information?</p> <p>22 A. Repeat your question.</p> <p>23 Q. Once they have a picture of the license plate,</p> <p>24 what does -- you know, okay. If the -- if the -- I have</p> <p>25 an EZ TAG, it automatically reads my EZ TAG, then I</p>	<p>45</p> <p>1 you're -- you're sent a bill for that violation.</p> <p>2 Q. (BY MR. FOMBY) Okay. So if I don't have an</p> <p>3 EZ TAG and I go through it, they look at my plate</p> <p>4 information and they send me a bill for driving through</p> <p>5 that?</p> <p>6 A. As I understand it, yes.</p> <p>7 Q. Okay. And that's referred to up on the signs</p> <p>8 as paid by mail?</p> <p>9 A. Once again, I don't know what sign you're</p> <p>10 talking about.</p> <p>11 Q. So the -- so when someone drives through and</p> <p>12 they don't have an EZ TAG and they get sent a bill, is</p> <p>13 that a criminal violation or a civil violation?</p> <p>14 MS. BAKER: Objection, calls for a legal</p> <p>15 conclusion, but you may answer if you know.</p> <p>16 A. Okay. That's going to be a -- the fine itself</p> <p>17 is a civil issue.</p> <p>18 Q. (BY MR. FOMBY) And because they know about</p> <p>19 the plate, wouldn't they then normally know who the</p> <p>20 owner of that vehicle is?</p> <p>21 A. Yes.</p> <p>22 Q. And when they send the bill, they send the</p> <p>23 bill to the owner?</p> <p>24 A. To the registered owner.</p> <p>25 Q. Okay. So a person who violates the tollway</p>

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<p style="text-align: right;">46</p> <p>1 has committed a civil offense; is that correct?</p> <p>2 A. That is incorrect.</p> <p>3 Q. But you said it was a civil, not a criminal</p> <p>4 offense?</p> <p>5 A. The actual toll violation. But once you have</p> <p>6 tolls accumulated, then under Texas Transportation Code</p> <p>7 you're operating a motor vehicle on the tollway when</p> <p>8 prohibited because it becomes prohibited at that time.</p> <p>9 Q. Okay. So in this case the owner and</p> <p>10 registered agents were not Ashtian Barnes?</p> <p>11 A. That's correct.</p> <p>12 Q. You have no information at all that Ashtian</p> <p>13 Barnes was responsible for any toll violations; is that</p> <p>14 correct?</p> <p>15 A. Repeat your question, sir.</p> <p>16 Q. You have no information -- at the time that</p> <p>17 you stopped Ashtian Barnes, you had nothing, no evidence</p> <p>18 whatsoever, no information that said Ashtian Barnes was</p> <p>19 personally responsible for the toll violation; is that</p> <p>20 correct?</p> <p>21 A. The information that I had was that the</p> <p>22 vehicle was prohibited and the operator of the vehicle</p> <p>23 was operating the vehicle on the tollway while the</p> <p>24 vehicle was prohibited.</p> <p>25 Q. Okay. Is there anything on the vehicle</p>	<p style="text-align: right;">48</p> <p>1 Deputy, and correct me if I'm wrong, is that the light</p> <p>2 goes off after you pass the reader?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay.</p> <p>5 A. I'm gonna clarify that. Actually it depends.</p> <p>6 If it's an EZ TAG lane, yes. If it's a pay lane, no,</p> <p>7 the reader is in front of you. The light is in front of</p> <p>8 you. That would be the lanes with -- with the toll</p> <p>9 collectors in them. And that would be the lanes with --</p> <p>10 with toll collectors.</p> <p>11 Q. And these loans actually have arms that come</p> <p>12 down to stop you from --</p> <p>13 A. No. Those are the automated coin machines.</p> <p>14 The collector ones actually are the people inside the</p> <p>15 booth that will provide change when paying a toll.</p> <p>16 Those do not have the arms.</p> <p>17 Q. Do you have any personal knowledge of what</p> <p>18 lane Ashtian Barnes may have used to enter the tollway?</p> <p>19 A. No.</p> <p>20 Q. Okay. Now, you stopped the person for a</p> <p>21 traffic violation, you've walked up, you've made the</p> <p>22 initial contact. You said that you tell them -- you</p> <p>23 introduce yourself, tell them why you made the stop.</p> <p>24 What's the next step in the interaction?</p> <p>25 A. The normal step is to ask him for a driver's</p>
<p style="text-align: right;">47</p> <p>1 that -- that pops up and tells you that this vehicle has</p> <p>2 an existing -- is prohibited from using the tollway?</p> <p>3 A. Will you repeat your question?</p> <p>4 Q. Okay. I'm renting a car, I'm renting a car</p> <p>5 from Hertz or Avis or any other agency, and I drive on</p> <p>6 the tollway and -- is there anything in that car that</p> <p>7 flashes a light and says you can't use the tollway,</p> <p>8 you're prohibited?</p> <p>9 MS. BAKER: Objection, calls for</p> <p>10 speculation.</p> <p>11 A. I don't -- I wouldn't know how to answer that</p> <p>12 question. I -- I don't know.</p> <p>13 Q. (BY MR. FOMBY) Do you know of any devices</p> <p>14 that exist in normal cars that inform you whether or not</p> <p>15 your car is prohibited from using the tollway?</p> <p>16 A. No.</p> <p>17 Q. Okay. Is there any kind of flashing light</p> <p>18 that occurs as you're using the tollway that says your</p> <p>19 car is prohibited from using the tollway?</p> <p>20 A. Yes.</p> <p>21 Q. Where are those lights?</p> <p>22 A. They're on the -- by the readers on the top,</p> <p>23 there will be a red light that will go off if once you</p> <p>24 passed the reader and you are a prohibited vehicle.</p> <p>25 Q. Okay. So what you -- what you just said,</p>	<p style="text-align: right;">49</p> <p>1 license, insurance or proof of financial responsibility.</p> <p>2 Q. Now, if a car is a rental car, does it</p> <p>3 normally come with proof of financial responsibility or</p> <p>4 an insurance card?</p> <p>5 A. Yes.</p> <p>6 Q. Where would that be located?</p> <p>7 A. Most of the time it is located in the glove</p> <p>8 box.</p> <p>9 Q. Are you sure about that?</p> <p>10 A. In my experience when a vehicle, you rent a</p> <p>11 vehicle, normally the insurance is in the glove box.</p> <p>12 Q. Have you been trained on that particular</p> <p>13 issue?</p> <p>14 A. No, that's personal experience.</p> <p>15 Q. Okay. Now, in the State of Texas, you are</p> <p>16 required to be licensed -- a licensed driver in order to</p> <p>17 drive on -- on public roads; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. But in the State of Texas, you are not</p> <p>20 required to have a driver's license with you, are you?</p> <p>21 A. You must provide identification.</p> <p>22 Q. In the State of Texas, you're not required to</p> <p>23 have a driver's license with you, are you?</p> <p>24 A. You're supposed to have identification, which</p> <p>25 if you have a driver's license, it would be your</p>

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<p>1 driver's license or a Texas ID.</p> <p>2 Q. If a person -- if you stopped me on the side 3 of the road and I rushed out of the house to make it to 4 court, and I forgot my wallet, do you have any -- as -- 5 as a police officer, do you have any ability to check on 6 whether or not I am licensed by the State of Texas?</p> <p>7 A. There is.</p> <p>8 Q. And how is that?</p> <p>9 A. Running your name, date of birth for a 10 driver's license and comparing that driver's license 11 return to a picture.</p> <p>12 Q. And it actually shows you a picture of the 13 person on -- that has that license?</p> <p>14 A. Now it does.</p> <p>15 Q. And on April 28th, 2016, did it show the 16 driver's license in your car?</p> <p>17 A. We never got to that point.</p> <p>18 MS. BAKER: The picture? Did you mean 19 the picture? Did it show a picture?</p> <p>20 Q. (BY MR. FOMBY) The picture?</p> <p>21 A. No.</p> <p>22 Q. Okay. Would it tell that there's a person 23 with that name and date of birth was licensed?</p> <p>24 A. Yes.</p> <p>25 Q. Did you ever run -- go back and run the</p>	<p>50</p> <p>1 insurance with you?</p> <p>2 A. As of now, yes. Before, you must provide 3 proof of financial responsibility.</p> <p>4 Q. Okay. When did that law change?</p> <p>5 A. I believe it was in 2017 or 2018.</p> <p>6 Q. And are you aware of what happens if you do 7 have -- if you're cited for not having a driver's 8 license, are you aware of how that -- the courts manage 9 that particular issue?</p> <p>10 A. No, I do not.</p> <p>11 Q. Are you aware that you go and demonstrate to 12 the courts that you are licensed and/or have insurance 13 in order to make the citation go away?</p> <p>14 A. Most likely, yes.</p> <p>15 Q. Okay. So when you approached Ashtian Barnes, 16 what did -- did you ask him for his driver's license?</p> <p>17 A. Right off the bat, no, because he interrupted 18 me, saying that it was a rental car and the vehicle -- 19 he was on his way to wash it and return it.</p> <p>20 Q. After that did you ask him for his driver's 21 license?</p> <p>22 A. I asked him who the vehicle -- where he rented 23 the vehicle from or who the vehicle -- who rented the 24 vehicle, and he stated that it was his girlfriend, had 25 rented the vehicle.</p>
<p>1 driver's license for Ashtian Barnes?</p> <p>2 A. No.</p> <p>3 Q. A lot of times my wife gets these little 4 insurance updates in the mail and she puts -- is 5 supposed to put them in the cars but sometimes she 6 forgets. If I pick up -- I'm stopped and I grabbed my 7 insurance thing and it's out of date, do you have any 8 way of checking to see whether or not I'm insured?</p> <p>9 A. Now there is.</p> <p>10 Q. Okay. Was there any way to check on whether 11 or not someone had insurance on April 28th, 2016?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Is that true globally or just for the 14 Constable's Office?</p> <p>15 MS. BAKER: Objection, calls -- vague.</p> <p>16 A. I'm -- I'm not sure if it's globally, sir.</p> <p>17 Q. (BY MR. FOMBY) Okay. From the standpoint of 18 your squad car, you had no ability to access the Texas 19 database for insurance, automotive insurance on that 20 date?</p> <p>21 A. On that date, I don't believe so. I don't 22 think that was an option or something that we could 23 access.</p> <p>24 Q. Okay. Now, are you aware that under Texas 25 law, you are not required to have that proof of</p>	<p>51</p> <p>1 Q. Okay.</p> <p>2 A. And had had it for approximately a week.</p> <p>3 Q. Okay. At any point did you ask him for his 4 driver's license?</p> <p>5 A. Yes. After -- after that initial encounter 6 with the -- about the rental agreement, I did ask for 7 his driver's license.</p> <p>8 Q. Okay. Was he able to locate it?</p> <p>9 A. No. He said he didn't have it with him.</p> <p>10 Q. Did he attempt to be looking for a driver's 11 license or the rental agreement while you encountered -- 12 during the encounter?</p> <p>13 A. He grabbed a stack of papers and was fumbling 14 through them but not actually looking at the papers.</p> <p>15 Q. Okay. In other words, he was looking off and 16 fumbling through them?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Where did he get that stack of papers?</p> <p>19 A. From the floorboard of the vehicle.</p> <p>20 Q. Which floorboard?</p> <p>21 A. The passenger floorboard.</p> <p>22 Q. And during that encounter, was he able to find 23 the rental agreement for you?</p> <p>24 A. He never was looking for it. He was just 25 having the papers in his hand fumbling through it and</p>

<p>1 looking towards my -- looking in my direction.</p> <p>2 Q. I understand, Deputy. My question was: Did</p> <p>3 he ever locate that rental agreement for you?</p> <p>4 A. He never attempted to look for it in the first</p> <p>5 place.</p> <p>6 Q. Did he ever suggest where his driver's license</p> <p>7 might be?</p> <p>8 A. At one point he did say that his ID or</p> <p>9 driver's license was in the trunk.</p> <p>10 Q. Did he say that it was in the trunk or it</p> <p>11 might be in the trunk?</p> <p>12 A. He said it was in the trunk.</p> <p>13 Q. Did he offer to allow you to look in the trunk</p> <p>14 to see if his license was back there? Did he offer to</p> <p>15 let you look in the trunk?</p> <p>16 A. Yes.</p> <p>17 Q. Did he open the trunk for you?</p> <p>18 A. He maneuvered the switch inside the vehicle to</p> <p>19 open the trunk.</p> <p>20 Q. Okay. He pushed the button and the trunk</p> <p>21 popped open?</p> <p>22 A. Correct.</p> <p>23 Q. Is that fair?</p> <p>24 A. Correct.</p> <p>25 Q. Now let's rotate back a little bit to driver's</p>	<p>1 backup?</p> <p>2 A. After I smelled the odor of marijuana in the</p> <p>3 vehicle, that's when I radioed for backup.</p> <p>4 Q. So you were -- explain to me, Deputy, so I can</p> <p>5 understand. You're afraid for your safety so you will</p> <p>6 not go back to your car. This is a car that's been</p> <p>7 stopped for a toll tag violation. You're afraid for</p> <p>8 your safety so you won't go and confirm his information,</p> <p>9 but you don't call for backup until you think you need</p> <p>10 to search the car?</p> <p>11 MS. BAKER: I'm going to object to that</p> <p>12 question on several grounds. Number one, it's very</p> <p>13 argumentative, and number two, I believe it misstates</p> <p>14 his testimony.</p> <p>15 Q. (BY MR. FOMBY) So Deputy, let me understand.</p> <p>16 THE REPORTER: Could you repeat that?</p> <p>17 MR. FOMBY: Yes.</p> <p>18 Q. (BY MR. FOMBY) You were afraid for your</p> <p>19 safety, and because of that reason you didn't go back to</p> <p>20 your car to check his driver's license?</p> <p>21 A. No. I didn't go back to run his driver's</p> <p>22 license because I didn't have the information to do so.</p> <p>23 Q. Did you ask Mr. Barnes what his name was?</p> <p>24 A. When he -- he said that the ID was -- or</p> <p>25 driver's license was in the trunk and he popped the</p>
<p>1 55</p> <p>1 license and insurance. You say that you had no ability</p> <p>2 in your squad car to look up a driver's license. Was</p> <p>3 dispatchable --</p> <p>4 A. That -- that's not what I said.</p> <p>5 Q. Okay.</p> <p>6 A. I said we never got to that point to be able</p> <p>7 to run the driver's license. I had no idea who I was</p> <p>8 encountering at that time.</p> <p>9 Q. Okay. So at no point during the encounter did</p> <p>10 you go back to your car to run his driver's license?</p> <p>11 A. No.</p> <p>12 Q. And at no point during the encounter did you</p> <p>13 go back to confirm that it was a rental car?</p> <p>14 A. No. That opportunity never -- was never</p> <p>15 given.</p> <p>16 Q. When you say "that opportunity was never</p> <p>17 given," did Ashtian Barnes prevent you specifically in</p> <p>18 any way from going back to your squad car?</p> <p>19 A. Yes. For officer safety when he was digging</p> <p>20 around the vehicle, it was a -- it's a red flag for us</p> <p>21 to maintain eyes on the individual for officer safety.</p> <p>22 Q. So it was important for you to keep an eye on</p> <p>23 him during this period for your safety?</p> <p>24 A. Correct.</p> <p>25 Q. Did you -- at what point did you call for</p>	<p>1 trunk, in my experience that's deceptive behavior on an</p> <p>2 individual to try to gain your focus away from what's</p> <p>3 actually going on inside the vehicle.</p> <p>4 Q. Deputy, the question I asked you was</p> <p>5 specifically: Did you ask him what his name was?</p> <p>6 A. We didn't get to that point.</p> <p>7 Q. You had a long conversation with him, did you</p> <p>8 not?</p> <p>9 MS. BAKER: Objection, mischaracterizes</p> <p>10 the evidence in this case.</p> <p>11 A. The conversation we had, the encounter we had</p> <p>12 was rapidly evolving, so the incidents that were</p> <p>13 occurring, him fumbling on the floorboard, him digging</p> <p>14 around, I did, you know, tell him on four different</p> <p>15 occasions stop digging around. His hand, his left hand</p> <p>16 was going towards the floorboard of the vehicle while</p> <p>17 his right hand was, you know, reaching on the passenger</p> <p>18 floorboard. So a rapidly evolving situation, my</p> <p>19 priority was for my safety and to maintain visual of the</p> <p>20 suspect.</p> <p>21 Q. (BY MR. FOMBY) So you were afraid for your</p> <p>22 safety at that point. Is that fair, Deputy?</p> <p>23 A. There was flags that were raised for me to be</p> <p>24 more concerned at that point.</p> <p>25 Q. Is that a yes or a no, Deputy?</p>

<p>1 A. Yes.</p> <p>2 Q. Okay. And you were so afraid for your safety 3 that you did not even -- that you did not ask him what 4 his name was?</p> <p>5 MS. BAKER: Objection, argumentative, 6 misstates his testimony.</p> <p>7 A. Repeat the question.</p> <p>8 Q. (BY MR. FOMBY) You were so afraid for your 9 safety that you did not take the time to ask him what 10 his name was?</p> <p>11 A. No, the rapidly evolving events that occurred 12 did not allow me to get to that point because the focus 13 was shifting from being a traffic stop to something else 14 being, you know, deceptive inside the vehicle.</p> <p>15 Q. And at that point you were so afraid for your 16 safety you didn't -- did not ask Ashtian Barnes what his 17 date of birth was; is that correct?</p> <p>18 A. I did not ask him for his information, 19 correct.</p> <p>20 Q. And at that point you were so afraid for your 21 safety you did not return to your squad car to confirm 22 that it was, in fact, a rental car; is that correct?</p> <p>23 A. At the point there was no time to, you know, 24 leave the vehicle to go run information.</p> <p>25 Q. And yet, at this time that you were so afraid</p>	<p>58</p> <p>1 you know what he was thinking.</p> <p>2 MS. BAKER: Objection --</p> <p>3 Q. (BY MR. FOMBY) And what gave you --</p> <p>4 MS. BAKER: -- argumentative and 5 misstates his testimony.</p> <p>6 Q. (BY MR. FOMBY) What gave you the ability to 7 know what he was thinking at that particular time?</p> <p>8 MS. BAKER: Same objection, 9 argumentative, misstates Deputy Felix's testimony. You 10 may answer.</p> <p>11 THE WITNESS: Okay.</p> <p>12 A. I never said that I read his mind. What I 13 said that his behavior wasn't common for someone who 14 would be looking for a rental agreement. He was -- he 15 had his hand, fumbling through it, but at the same time 16 looking at me. If you're looking at something, looking 17 for something you're going to be looking at that stack 18 of papers, you know, trying to find it, not grabbing it, 19 just moving it around and looking at me at the same 20 time.</p> <p>21 Q. (BY MR. FOMBY) At some point in this 22 interaction, after the stop, you informed Ashtian Barnes 23 that you smelled a strong odor of marijuana; is that 24 correct?</p> <p>25 A. That's correct.</p>
<p>59</p> <p>1 for your safety that you would -- did not ask the basic 2 questions for a traffic stop, you did not yet call for 3 backup, did you?</p> <p>4 A. Backup had already been called.</p> <p>5 Q. It had been?</p> <p>6 A. During the first initial conversation of me 7 asking who the -- for who I was and why he was being 8 stopped and him telling me that the -- it was a rental 9 car, that's when I had called for backup.</p> <p>10 Q. We're gonna see -- Deputy, is it -- in your 11 experience, is it common for people who are looking for 12 their driver's license to dig around their wallets for 13 papers?</p> <p>14 A. For their license?</p> <p>15 Q. Yes.</p> <p>16 A. It's uncommon.</p> <p>17 Q. Is it common in your experience when people 18 have a rental car, for them to dig around in the papers 19 in the car to be able to show you the rental receipt?</p> <p>20 A. That is common, but that's not what he was 21 doing.</p> <p>22 Q. And Officer Felix, Deputy Felix, you have -- 23 when did you pick up this ability to read his mind?</p> <p>24 MS. BAKER: Objection, argumentative.</p> <p>25 Q. (BY MR. FOMBY) Officer Felix, you said that</p>	<p>61</p> <p>1 Q. You asked him if there was anything in the car 2 that he needed to tell you about; is that correct?</p> <p>3 A. That I need to know about.</p> <p>4 Q. Was -- was it -- was that the point that you 5 called for backup?</p> <p>6 A. No. Backup had already been called prior to 7 that.</p> <p>8 Q. How long does it take for a backup car to 9 arrive normally?</p> <p>10 A. It just depends. If there's a unit -- there's 11 several units on the tollway, so it could be seconds or 12 it could be a minute or two.</p> <p>13 Q. At that point you opened the door and told 14 Ashtian Barnes that he needed to leave the vehicle; is 15 that correct?</p> <p>16 A. When I told him to get out of the vehicle was 17 his -- his actions kept indicating to me that he was up 18 to something, either trying to hide something or reach 19 for something.</p> <p>20 Q. To your knowledge and training as a deputy 21 constable, are you supposed to have a backup officer in 22 place before you remove an individual from the vehicle?</p> <p>23 MS. BAKER: Objection, overbroad. You 24 may answer.</p> <p>25 THE WITNESS: Okay.</p>

<p>1 A. Every situation's different. Sometimes 2 there's not time to, you know, separate the individual 3 from the vehicle, having to wait for backup. 4 Q. (BY MR. FOMBY) Other than shuffling papers, 5 did it appear to you that Ashtian Barnes was going 6 anywhere? 7 A. No. 8 Q. Okay. In fact, didn't you state that at one 9 point Ashtian Barnes turned off his car? 10 A. That is correct. 11 Q. And that he removed the key from the ignition 12 and placed it down near the gearshift? 13 A. Correct. 14 Q. Are those the actions in your experience, 15 Deputy, of a person about to flee the scene? 16 A. Those aren't common actions. You know, 17 usually when someone gets pulled over the vehicle stays 18 running and in park. Rarely does someone turn off the 19 vehicle and place the keys, you know, down or on the 20 dash, so that's not a common action for someone to take. 21 Q. I understand that may not be common, and that 22 makes it more interesting to me. Is that action 23 consistent with a person who is imminently ready to flee 24 the scene? 25 A. No.</p>	<p>62</p> <p>1 A. The original question you asked was did I 2 believe or -- 3 THE WITNESS: Actually, can we read that 4 question back because I don't -- 5 Q. (BY MR. FOMBY) Well, will you just answer 6 this question -- 7 A. Okay. 8 Q. -- make it easier on the court reporter. At 9 any point at -- before the car got turned back on, did 10 you see an actual weapon in the car? 11 A. I did not see a weapon in the car. 12 Q. Okay. So getting back to the moment, your 13 statement was that Ashtian Barnes had been sitting in 14 the car with the engine running for the first part of 15 the inter -- of -- of your discussion, correct? 16 A. First part of? 17 Q. When you walked up and for the first part of 18 your conversation with him while he was shuffling 19 through the papers, the engine was running? 20 A. At some point is when he turned it off. Exact 21 point, I cannot recall. But I did observe him turn off 22 the car and set the keys down. 23 Q. And the keys are sitting down here by the 24 gearshift? 25 A. Down in the center console gearshift area.</p>
<p>63</p> <p>1 Q. At any point in this interaction with Ashtian 2 Barnes, did you ever see him -- did you ever get an 3 indication of a weapon inside the car? 4 A. Yes. 5 Q. At what point was that? 6 A. When he was digging around in the vehicle. 7 Q. What did you see? 8 A. I saw his hand, his left hand towards the 9 floorboard of the vehicle while his right hand was 10 extended over to the passenger floorboard. 11 Q. His left hand was where? 12 A. Down by his leg in -- in the seat area as he's 13 reaching forward. 14 Q. So is the floorboard, the driver's side 15 floorboard of the car, a weapon? 16 A. No, but it could potentially be a weapon 17 anywhere in that area. 18 Q. Okay. That's not the question I asked you, 19 Deputy. First of all, I asked you, at any point did you 20 see a weapon in his possession? 21 MS. BAKER: I'm going to object to that 22 because I don't think that was your question. We could 23 read it back but if that's your question now, you may 24 answer. 25 THE WITNESS: Okay.</p>	<p>65</p> <p>1 Q. And you have opened -- did that happen before 2 or after you opened the car door? 3 A. That happened as I was opening the car door. 4 Q. Okay. So you were opening the car door. He 5 turns off his car and puts his key in there? 6 A. No, no, I'm sorry. Repeat that question 7 again. At what point, what? 8 Q. Did he turn off the car and put his key near 9 the gearshift? 10 A. Prior to opening the vehicle. 11 Q. Okay. 12 A. The vehicle door. 13 Q. So Deputy, you opened the door of the vehicle 14 and was the door open wide or open just partially? 15 A. It was open enough for me to be in the doorway 16 area. 17 Q. Okay. At that point did you see a weapon in 18 the car? 19 A. No, but I couldn't see his -- his hand as he 20 was leaning forward. 21 Q. So you're saying at this point as you opened 22 the car door, he's leaning forward? 23 A. He's leaning forward. When I opened the car 24 door, he's leaning forward towards the console area. 25 Q. Isn't it true in your statement that you said</p>

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<p style="text-align: right;">66</p> <p>1 at this point he was digging around in the red Solo cup 2 on the passenger side?</p> <p>3 A. No, that was prior when he was -- he was 4 reaching in that area when I kept telling him to stop 5 digging around.</p> <p>6 Q. Okay. Now at this point your backup officer 7 has not yet arrived. You have the door open, and you 8 tell Ashtian Barnes to step out of the vehicle?</p> <p>9 A. Yes.</p> <p>10 Q. What happens then?</p> <p>11 A. When I opened the door and asked him to step 12 out he reaches -- leans forward and as I'm trying to see 13 what he's doing, I'm expecting him to step out, he's 14 grabbing the keys to -- to the vehicle and as he turned 15 the vehicle on, his left hand is down, like by the seat, 16 like his lap, so I'm looking and he turned the car and 17 quickly puts it in drive.</p> <p>18 Q. Okay. Is this a con -- console mounted 19 gearshift or is it on the --</p> <p>20 A. I -- I don't recall. I don't recall. I know 21 it just happened so quick that, you know, the car was 22 put in drive.</p> <p>23 Q. So he leans forward, Deputy, grabs the key. 24 Is it a key on a key chain or just a solo -- individual 25 key?</p>	<p style="text-align: right;">68</p> <p>1 have been a fraction of a second to a second. I mean it 2 was that quick.</p> <p>3 Q. Okay. And so you perceived, Deputy, at this 4 point, that he is preparing to leave the scene; is that 5 fair?</p> <p>6 A. Correct.</p> <p>7 Q. And so what do you tell him -- do you tell him 8 anything to try to stop him from leaving?</p> <p>9 A. "Don't do it, don't do it."</p> <p>10 Q. Did you say "don't do it"?</p> <p>11 A. "Don't do it," as I'm drawing my weapon.</p> <p>12 Q. Isn't it fair to say that what you told him 13 instead was don't fucking move?</p> <p>14 A. That's incorrect.</p> <p>15 Q. Do you recall at any particular point in the 16 next several seconds screaming don't fucking move at 17 least twice?</p> <p>18 A. I said "fucking stop, fucking stop" when I was 19 on the vehicle, on the doorsill of the vehicle. I was 20 moving.</p> <p>21 Q. So at this point, if you had to list the 22 infractions -- if you were going to arrest Ashtian 23 Barnes before he picked up the key, if you were going to 24 arrest him, what would he be charged with?</p> <p>25 A. At that point he -- he wasn't going to be</p>
<p style="text-align: right;">67</p> <p>1 A. No, it's a key. I can't tell you at this 2 point if it was one key or multiple keys but it was the 3 key to the ignition.</p> <p>4 Q. And leaning forward toward the steering wheel, 5 he reaches down, grabs a key, puts it into the ignition, 6 turns it on, puts -- puts his foot on the brake, puts it 7 in gear. Is that what you're saying?</p> <p>8 A. That's -- that's correct.</p> <p>9 Q. And approximately how long did it take for him 10 to lean forward and then go through all of those motions 11 to get --</p> <p>12 A. Fraction of a second probably.</p> <p>13 Q. So at that point, is it fair to say, Deputy, 14 that you were aware that the car was in gear, it was 15 probably going to go forward?</p> <p>16 A. Well, at the same time that that was occurring 17 I was aware and was attempting to have him stop or stop 18 from leaving the scene.</p> <p>19 Q. So let's -- Deputy, let's slow this down 20 again. He's going through all these motions, leaning 21 forward, picking up a key, locating the -- the place to 22 insert the key, starting the car and then reaching down 23 and grabbing the gear and putting it into gear. And 24 that happened in a fraction of a second?</p> <p>25 A. That happened in -- so rapidly that it must</p>	<p style="text-align: right;">69</p> <p>1 arrested. He was going to be detained.</p> <p>2 Q. Okay. If you were going to detain him, what 3 would be the reason for detaining him at that point?</p> <p>4 A. The reason for detaining him was that his 5 constant, you know, actions that he -- that he did while 6 looking at the pieces of paper and trying to find the 7 rental agreement but not looking at the stack at the 8 same time. Him digging around in the vehicle asking -- 9 and me asking him multiple times to stop digging in the 10 vehicle. I had reasonable -- a suspicion that there was 11 something in that vehicle that he was either going for 12 or trying to conceal.</p> <p>13 Q. Since he was playing with papers, are you 14 thinking, was it your reasonable suspicion that he had 15 something in those papers he was trying to conceal?</p> <p>16 A. No. My -- my belief was that as he was doing 17 that, was to distract me or, you know, keep my focus 18 on -- on that versus, you know, whatever else he -- was 19 going on in that vehicle.</p> <p>20 Q. So at that point, Deputy, would it be fair to 21 say that you had no actual evidence of a crime that was 22 being committed or -- or was going to be committed?</p> <p>23 A. I have reasonable suspicion that there was 24 marijuana in that vehicle.</p> <p>25 Q. Okay. And that's because, Deputy, you smelled</p>

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1 a strong odor of marijuana? 2 A. That's correct. 3 Q. And Deputy, we know that marijuana is legal in 4 I don't know how many states now, but in Texas, 5 possession of a small amount of marijuana is what kind 6 of crime? 7 A. Repeat your question. 8 Q. In Texas, on the -- on April 28th, 2016, 9 possession of less than two ounces of marijuana is what 10 kind of crime? 11 A. It's a misdemeanor crime. 12 Q. Is it a misdemeanor A, B or C? 13 A. For two ounces of marijuana it's a misdemeanor 14 B, I believe. 15 Q. So it's the -- the level just above a C which 16 is a fine only offense; is that correct? 17 A. A citation. 18 Q. So you're saying that you had at this point, 19 Deputy, and correct me if I'm wrong, when I asked you 20 why -- why you were thinking that you needed to prevent 21 him from leaving, you did not say anything about the 22 toll tag violation; is that correct? 23 A. At that point it was him fleeing the scene and 24 possibly causing, you know, a crash or causing injury to 25 someone else as well.	70 1 true? 2 MS. BAKER: Objection, asked and 3 answered. 4 A. That's correct. 5 Q. (BY MR. FOMBY) So now he puts the car in 6 gear, and what is it specifically that makes you think 7 that his driving habits are going to change if he leaves 8 the scene? 9 A. At that point he's -- he's evading a lawful 10 stop which in my experience always leads to a chase, 11 someone driving erratically to get away. 12 Q. So what I'm hearing you say is that you had no 13 evidence that he was going to drive in a reckless 14 manner, but you presumed that he was going to drive in a 15 reckless manner? 16 A. That is correct. 17 Q. And based upon that presumption that you had 18 to stop this reckless behavior and dangerous behavior, 19 you felt it was important at that point to stop him from 20 leaving the scene? 21 A. That is correct. 22 Q. So your -- at this point your objective in -- 23 in stopping him was to prevent him from endangering 24 other people on the highway with his driving? 25 A. That would be a part of it, yes.	72
71 1 Q. Is there anything -- okay, going back earlier, 2 we talked about his conduct in operating his car when 3 you stopped him. 4 A. Correct. 5 Q. And you said that he reacted normally -- when 6 you turned on your lights, his response time was -- was 7 normal for -- for any individual you stopped; is that 8 correct? 9 A. That's correct. 10 MS. BAKER: Objection, asked and 11 answered. 12 Q. (BY MR. FOMBY) And then you told us that once 13 your lights came on and he realized you were behind you 14 [sic], he moved rapidly to -- to the side of the road 15 and stopped safely; is that right? 16 MS. BAKER: Objection, asked and 17 answered. 18 Q. (BY MR. FOMBY) Is that correct? 19 MS. BAKER: You can go ahead and answer. 20 A. Yes. 21 Q. (BY MR. FOMBY) And you told us that at the -- 22 all the -- the entire time that you observed him 23 driving, that never once did you see him swerving or 24 behaving in any way that would suggest that he was 25 impaired or not in full control of the vehicle; is that	73 1 Q. And so as you saw Ashtian Barnes starting the 2 car and putting it in gear, what was your next response? 3 A. My next response was to draw my weapon to gain 4 compliance of him not leaving the scene and at the same 5 time was to try to get him to not put the car in park -- 6 Q. Okay. 7 A. I mean, excuse me, in drive. 8 Q. And at this point when he has the car in gear, 9 did you order him to stop the car? 10 A. I said "don't do it." Or correction. When I 11 said "don't do it" is when I actually saw him going 12 to -- at the same time as he's turning the vehicle. 13 Once the vehicle was in park -- 14 Q. In gear? 15 A. In gear, I'm sorry, in gear, then at that 16 point it's, you know, rapid events happened and, you 17 know, you know, everything else transpired. 18 Q. Okay. And at that point after he started the 19 car, do you recall what warnings you gave him at that 20 point? 21 MS. BAKER: Objection, asked and 22 answered. 23 A. When the vehicle was in gear? 24 Q. (BY MR. FOMBY) Yes. 25 A. As I was holding onto the vehicle, it was	

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<p>1 "fucking stop, fucking stop."</p> <p>2 Q. The car is in gear and you draw your gun. Did 3 you draw it with your left hand or your right hand?</p> <p>4 A. I'm right-handed.</p> <p>5 Q. So you pull up your gun with your right hand?</p> <p>6 A. Correct.</p> <p>7 Q. And do you continue to stand outside the 8 vehicle and point the gun toward him to stop him?</p> <p>9 A. As I drew my vehicle -- my -- my weapon, like 10 I said, he was leaning forward towards the ignition so 11 my view was obstructed. So when I realized what he was 12 doing, I drew my weapon and said "don't do it." And as 13 I'm reaching to try to keep him from putting the vehicle 14 in drive, that's with my left hand, so I'm trying to 15 keep that from happening as he's putting the car in 16 gear.</p> <p>17 Q. Okay. Deputy, you just said, and stop me if 18 I'm wrong and I heard it wrong, that he was leaning 19 forward and so your view inside the car was -- was 20 constricted, and so you did not actually have a view of 21 him starting the car?</p> <p>22 A. No, I saw him starting the car or putting the 23 key in the ignition. Now what I couldn't see was -- 24 was -- what was in the general floorboard area or right 25 side of the -- of his area as he was doing that.</p>	<p>74</p> <p>1 weapon or -- or flee the scene. I mean there was 2 multiple things that, you know, we think about as 3 officers that could potentially happen.</p> <p>4 Q. Okay. You realize that you have given a 5 statement in this case, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And you gave that statement under oath?</p> <p>8 A. Correct.</p> <p>9 Q. And never previously have you talked about him 10 leaning forward and fumbling for weapons. Do you recall 11 that?</p> <p>12 A. I never said he was fumbling for weapons.</p> <p>13 Q. He was fumbling for something?</p> <p>14 A. Correct.</p> <p>15 Q. And never before have -- previously have you 16 stated that he was behaving in such a manner?</p> <p>17 MS. BAKER: Objection, vague.</p> <p>18 Q. (BY MR. FOMBY) In -- in the statements that 19 you gave --</p> <p>20 MR. FOMBY: I'm going to ask you to mark 21 this as Exhibit 32.</p> <p>22 (Exhibit No. 32 marked.)</p> <p>23 Q. (BY MR. FOMBY) Do you recall this statement?</p> <p>24 A. Yes.</p> <p>25 Q. Deputy? This is a statement that you gave</p>
<p>1 Q. Okay. And so as soon as you saw him lean 2 forward and put the key in the ignition, could you see 3 him start the car?</p> <p>4 A. Yes.</p> <p>5 Q. And that's when you drew your service weapon?</p> <p>6 A. Correct, as he was doing it.</p> <p>7 Q. Okay. Now again, we -- we started this with a 8 question that you haven't answered yet, so let's skip 9 back to that question.</p> <p>10 At that point when you drew your service 11 weapon, did you continue your stance outside the car 12 and -- and point the gun inside the car?</p> <p>13 A. No.</p> <p>14 Q. Was one of the reasons why you felt he was 15 behaving suspicious, that one of the reasons that caused 16 you to draw your weapon, the fact that he leaned forward 17 suddenly?</p> <p>18 A. Repeat the question.</p> <p>19 Q. You -- you testified that he -- before 20 starting the car he leaned forward suddenly. Was that 21 something that caused you at that point to alert that -- 22 that something bad might be going on?</p> <p>23 A. My weapon was drawn because I believed that 24 he -- there was an obstruction of what was on his right 25 side and the ability to rapidly, you know, go for a</p>	<p>75</p> <p>1 under oath?</p> <p>2 A. That's correct.</p> <p>3 Q. In this statement, at any point did you state 4 that you were alarmed because of his furtive movements?</p> <p>5 THE REPORTER: What kind of movements?</p> <p>6 MR. FOMBY: Furtive.</p> <p>7 THE REPORTER: Thank you.</p> <p>8 A. I'm sorry, repeat your question.</p> <p>9 Q. (BY MR. FOMBY) In this statement, at any 10 point did you say that -- that his movements in the car 11 alerted you that something suspicious was going on?</p> <p>12 A. There's several times here where his actions 13 led me to believe that.</p> <p>14 Q. Deputy, that's not the question I asked.</p> <p>15 MS. BAKER: Excuse me, it may not be the 16 question that you asked him but please let him finish 17 his answer. And then if you don't like it you can 18 ask -- object to it or ask another question. Please 19 don't interrupt him. He's answering.</p> <p>20 MR. FOMBY: Okay.</p> <p>21 A. Okay. So there's several times here where his 22 actions led me to believe that his actions were I guess 23 conducive of -- of something that could potentially be, 24 you know, I guess evasive or, you know, an alarm to me.</p> <p>25 Q. (BY MR. FOMBY) Officer -- but Deputy Felix,</p>

1 again, my question was: In your statement that you gave
 2 under oath, at any point did you make a statement, did
 3 you say that his furtive behaviors, his movements inside
 4 the car, alerted you that something suspicious was going
 5 on?

6 **A. That statement is not directly in here, but
 7 the actions that he conducted is what alerted me to, you
 8 know, his behavior, him acting that way.**

9 Q. So Deputy, again, my question is a yes or no.
 10 Is -- is that -- or did you make that statement, did you
 11 put that in your statement that his furtive behaviors
 12 alerted you that something suspicious was going on? Did
 13 you make -- put that in your statement?

14 **A. That statement specifically, no. But his
 15 actions were.**

16 Q. And Deputy, in your statement that you gave,
 17 did you say anywhere in the statement that his leaning
 18 forward and his motions with his hands caused you --
 19 alerted you to try to stop him?

20 **A. I don't believe so.**

21 Q. In this statement that you gave under oath, at
 22 any point did you say that the reason why you felt that
 23 you needed to stop him was because his leaving the scene
 24 would present a danger to the general public?

25 **A. That statement specifically, no, but his**

1 reasonable suspicion that a crime might be occurring?

2 **A. Now his actions that led me to believe that
 3 are in here, but that statement specifically, no, it's
 4 not in this statement.**

5 Q. Okay. In your statement did you say that you
 6 had reasonable suspicion that he was about to flee the
 7 scene, and in so doing, put the general public at risk?

8 **A. In the statement, that specific statement,
 9 it's not in here, but that's what the -- my concern was
 10 due to the events that happened and he had posed.**

11 Q. Now, you have drawn your service weapon, and
 12 you stated that you did not maintain your stance outside
 13 the car but you instead lunged towards Ashtian Barnes to
 14 get inside of the car; is that correct?

15 MS. BAKER: Objection, misstates his
 16 testimony.

17 **A. No, I did not lunge in the car. What I did
 18 was try to prevent from him to putting the car in drive
 19 when I was made aware of what he -- his intention was.**

20 Q. (BY MR. FOMBY) And you said that you -- your
 21 right hand was holding your gun?

22 **A. Correct.**

23 Q. And you were using your left hand to try to
 24 put the gear lever in park?

25 **A. No, to try to keep him from putting the car in**

1 actions were what I believe would happen. I mean his
 2 actions that he took.

3 Q. So Deputy, I understand that when you were
 4 given an opportunity to provide a full statement, you
 5 believe it to be true and correct to the best of my
 6 knowledge, you did not say that his motions alerted you
 7 to -- to reasonable suspicion; is that correct?

8 MS. BAKER: Objection, asked and
 9 answered. Also it mixes up the legal -- the legal in my
 10 opinion. You may answer if you understand the question.

11 **A. I -- I -- repeat the question.**

12 Q. (BY MR. FOMBY) Well, you know what reasonable
 13 suspicion is?

14 **A. Yes.**

15 Q. And you can take certain kinds of actions
 16 based upon reasonable suspicion; is that correct?

17 **A. Correct.**

18 Q. Did you in your statement ever make -- state
 19 that -- that his movements inside the car gave you
 20 reasonable suspicion to think that -- that a crime might
 21 be occurring?

22 **A. I'm not understanding you. I'm sorry. Repeat
 23 the question again.**

24 Q. Did you anywhere in your statement say that
 25 his movements and moving the papers around gave you

1 drive. Like I said before, it happened so fast that
 2 it -- it wasn't even an option as I was trying to do so.

3 Q. So with his hand on the gearshift, how would
 4 your left hand be able to stop him from putting the car
 5 into drive?

6 **A. Well, originally what I was trying to do is
 7 keep him from getting the car on, it actually turning
 8 on. When I saw he was doing it is when I was reaching
 9 in. Like I said before, it happened so fast. By the
 10 time he turned it on, his hand was already going down
 11 towards -- towards the shifter.**

12 Q. So let's go back up a little bit because the
 13 timeframe just shifted a little bit. Now you're saying
 14 that when he moved forward you thought he was about to
 15 turn the car on, you -- that's when you first moved --
 16 pulled your gun and moved into the vehicle?

17 **A. All this happened, I mean within a short
 18 period -- period of timeframe, which was, you know, so
 19 fast that my actions were to draw my weapon because I
 20 already had a perception of maybe something, a weapon or
 21 him trying to flee at the same -- same moment.**

22 Q. Now, Deputy, pause there for a second and get
 23 back to that statement you just made. You had a
 24 perception that there was a weapon in the vehicle. Any
 25 place in your statement again, under oath, where you

<p style="text-align: right;">82</p> <p>1 stated that you had a perception there was a weapon in 2 the vehicle?</p> <p>3 A. At the statement, not that -- that statement 4 itself, but everything else that was done led me to 5 believe that there could be possibly something in that 6 vehicle.</p> <p>7 Q. Again, Deputy, you had an opportunity to give 8 your statement, your full and complete statement, and at 9 any point did you ever state that you thought there 10 might be a weapon in that vehicle?</p> <p>11 MS. BAKER: Objection, argumentative, 12 also asked and answered.</p> <p>13 Q. (BY MR. FOMBY) You have not -- in -- in my 14 opinion you have not answered it, you are -- so answer 15 the question. In your statement did you ever indicate 16 that there was a weapon in the vehicle?</p> <p>17 A. Not that statement directly, but everything 18 else that led to my belief is -- is in here.</p> <p>19 Q. So that statement that there was a weapon in 20 the vehicle was not -- you did not put that in your 21 statement?</p> <p>22 A. I'll have to reread it again. Give me a 23 minute.</p> <p>24 Q. Take your time.</p> <p>25 A. (Witness examines document.) Repeat your</p>	<p style="text-align: right;">84</p> <p>1 Q. And again, that particular statement that it 2 was -- that you were faced with a rapidly evolving 3 situation, that also is not in the statement, is it?</p> <p>4 A. That statement, no.</p> <p>5 MR. FOMBY: Can we go off?</p> <p>6 THE VIDEOGRAPHER: The time is 7 approximately 12:01 p.m., we're off the record. 8 (Lunch recess from 12:01 to 12:46 p.m.) 9 THE VIDEOGRAPHER: The time is 10 approximately 12:46 p.m. We're on the record.</p> <p>11 Q. (BY MR. FOMBY) Now Deputy, when we left we 12 were at the point where the car door, Ashtian Barnes' 13 car door was open and you were standing there. And you 14 said that you leaned -- he leaned forward and started 15 the car. You also mentioned at that point that he was 16 reaching down with his left hand toward the floorboard 17 of the driver's side floorboard?</p> <p>18 A. His hand was by his lap towards the 19 floorboard.</p> <p>20 Q. Now, in the -- in the statements that you gave 21 under oath, though, at no point here did you ever state 22 that you -- you saw him reaching down and fumbling 23 between his legs in the floorboard, did you?</p> <p>24 MS. BAKER: Objection, misstates his 25 testimony. You may answer.</p>
<p style="text-align: right;">83</p> <p>1 question, sir.</p> <p>2 Q. At any point in the official statement you 3 gave under oath, did you say -- did you say that 4 there -- that you perceived that there was a weapon in 5 the vehicle?</p> <p>6 A. Okay. In that statement, no.</p> <p>7 Q. Okay. At any point in this same statement did 8 you say that prior to Ashtian Barnes turning the car 9 back on, that you feared for your safety?</p> <p>10 A. His actions that were placed on here made me 11 believe so, yes.</p> <p>12 Q. Deputy, again, I'm asking you, you read the 13 document. Can you point to where in this statement you 14 said that you were afraid for your safety prior to 15 Ashtian Barnes turning the car back on?</p> <p>16 A. Prior to turning the car back on?</p> <p>17 Q. Yes.</p> <p>18 A. That statement directly, no, but the actions 19 listed, yes.</p> <p>20 Q. And if -- as you said, Deputy, the reason why 21 you didn't ask him his name was because you were so 22 frightened for your safety?</p> <p>23 A. No, it was a rapidly series of events that 24 occurred that it didn't give the opportunity to be able 25 to do so.</p>	<p style="text-align: right;">85</p> <p>1 THE WITNESS: Okay.</p> <p>2 A. No, it's not in there, but the events leading 3 to that point are stated in here.</p> <p>4 Q. (BY MR. FOMBY) So the answer is at no point 5 did you state that he was fumbling for something in the 6 floorboard of his side of the car?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. Now -- now you mentioned that you were 9 trying to stop him from leaving. And I'm sorry if I 10 have to -- I'm mainly trying to get us back to the point 11 where we were at. And you said that you had -- you 12 pull -- had pulled your service weapon and you had stuck 13 that forward; is that correct?</p> <p>14 A. Well, I got it in a shooting stance, which is 15 when you draw your weapon you, you know, present it to, 16 if you need to fire it, then it's there, instead of 17 firing from a hip position or a -- a extended position. 18 It's total -- a different type of stance, so it was -- 19 it was pulled out and extended out.</p> <p>20 Q. Now, the weapon that -- your service weapon is 21 a .40 caliber weapon, wasn't it?</p> <p>22 A. That's correct.</p> <p>23 Q. When you talk about a shooting stance, you 24 were talking about where the arm position is?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">86</p> <p>1 Q. And in a proper shooting stance, what is your 2 foot position?</p> <p>3 A. It depends on the situation.</p> <p>4 Q. Is a proper shooting position, as you've been 5 trained, leaning forward into a car?</p> <p>6 A. There's -- I'm gonna say there's no such thing 7 as a proper shooting position. When you're in a 8 situation, the situation dictates the way you stand, the 9 way you shoot, how you hold your weapon. I mean, if I'm 10 at the range I'm, you know, that -- feet apart, hands, 11 gun raised, you know, directly in front of me and, you 12 know, slightly leaning forward.</p> <p>13 Q. At the range do you ever practice lunging 14 forward and shooting from that position?</p> <p>15 A. Yes. Leaning forward.</p> <p>16 Q. Leaning forward?</p> <p>17 A. Leaning forward and shooting, yes, sir.</p> <p>18 Q. So at this point the car is being placed in 19 gear. The car has not yet started to leave. Where is 20 your -- where is your body? Where is your head and 21 where is your body, where are your arms? Can you 22 explain that to me?</p> <p>23 A. As the car is driving away or as it --</p> <p>24 Q. No, as -- as the car is in gear but before it 25 departs.</p>	<p style="text-align: right;">88</p> <p>1 the car. Where is your left arm?</p> <p>2 A. My left arm is inside the vehicle.</p> <p>3 Q. What are you holding onto to stay on the car?</p> <p>4 A. My forearm against the roof of the car.</p> <p>5 Q. So you're holding on -- into the car like 6 this?</p> <p>7 A. This part (Indicating.)</p> <p>8 Q. Or this part?</p> <p>9 A. As -- as -- just to keep a point of contact 10 and trying to hold onto -- to the vehicle.</p> <p>11 Q. Okay. Just to be clear, this -- this part of 12 your arm is inside the car and pressed up against the 13 roof of the car?</p> <p>14 A. No. Only my -- this part of the forearm 15 against the -- the entryway of the vehicle, the door of 16 the vehicle.</p> <p>17 Q. From inside?</p> <p>18 A. Inside, correct.</p> <p>19 Q. And where is your head?</p> <p>20 A. My head's above the roof of the car.</p> <p>21 Q. Where is your right arm?</p> <p>22 A. My right hand is holding out to the outside of 23 the vehicle.</p> <p>24 Q. Your right hand is holding onto the outside of 25 the vehicle?</p>
<p style="text-align: right;">87</p> <p>1 A. The car's in gear before it departs.</p> <p>2 Partially inside of the vehicle.</p> <p>3 Q. Okay.</p> <p>4 A. That I recall.</p> <p>5 Q. When did you put -- which foot did you first 6 put on the sill of the car?</p> <p>7 A. I don't recall at this point which foot it 8 was. I believe it was my left foot.</p> <p>9 Q. When did you put that first foot on the sill 10 of the car?</p> <p>11 A. As the car was driving away.</p> <p>12 Q. And Deputy, are you sure that you put that 13 first foot up as the car was driving away?</p> <p>14 A. As I recall, yes.</p> <p>15 Q. When did you put the second foot on the sill 16 of the car?</p> <p>17 A. As I felt the vehicle started moving forward.</p> <p>18 Q. But you just said the first foot went up as it 19 was driving away, now you're saying the second foot went 20 up as it's starting to move forward. Which is that?</p> <p>21 A. It's -- it was a simultaneous move --</p> <p>22 simultaneously -- excuse me, simultaneous move. As the 23 vehicle is starting to move, it's left foot, right foot, 24 and I'm holding on.</p> <p>25 Q. Okay. So now you're standing on the sill of</p>	<p style="text-align: right;">89</p> <p>1 A. No, left hand.</p> <p>2 Q. Your left hand?</p> <p>3 A. Left hand is holding --</p> <p>4 Q. Let's back up because now you told me that you 5 were -- this part of your left arm was -- right?</p> <p>6 A. No, right hand.</p> <p>7 Q. Okay. So your right hand is holding onto 8 what?</p> <p>9 A. My weapon.</p> <p>10 Q. Okay. Where is your right hand?</p> <p>11 A. It's inside the vehicle.</p> <p>12 Q. And when you first start to move -- feel the 13 car moving forward, was it like a Ferrari taking off or 14 was it a gradual acceleration?</p> <p>15 A. At that point I felt the vehicle take off, is 16 what I felt. I just felt the motion and to me it seemed 17 like it was, you know, accelerating very quickly.</p> <p>18 Q. And what happened as -- as the car started to 19 move forward and you're completely up on the sill with 20 this arm inside the car, this hand with the gun inside 21 the car, what -- what was the door doing behind you?</p> <p>22 A. My left hand was never inside the car.</p> <p>23 Q. Okay. Let's back up again. You said that you 24 were holding on with this part of your left arm 25 (Indicating) from inside the car?</p>

23 (Pages 86 to 89)

<p style="text-align: right;">90</p> <p>1 A. Right hand, with my right hand, not my left 2 hand. 3 Q. What was your -- and I asked you what your 4 left hand was doing? 5 A. I was holding onto the outside of the car. 6 Q. Okay. 7 A. I'm sorry, I misunderstood you. 8 MS. BAKER: Yeah, he did ask you that. 9 A. Okay. It was my left hand was on the outside 10 of the vehicle. 11 Q. (BY MR. FOMBY) Okay. 12 A. My right hand was in the inside of the vehicle 13 holding my weapon. 14 Q. So you're standing, you've got your right -- 15 your left arm holding onto the top of the car, your 16 right hand is inside? 17 A. Correct. 18 Q. Your right forearm is being pressed up against 19 the door frame? 20 A. The top part. 21 Q. Okay. From the inside? 22 A. From the inside. 23 Q. And at this point as the car is starting to 24 move, where was the car door behind you? 25 A. The car door was to my -- to my side.</p>	<p style="text-align: right;">92</p> <p>1 you're talking about before the car started spinning -- 2 started speeding away. At that point you were afraid of 3 getting pinned and drug. Is that what you're saying? 4 A. That's correct. 5 Q. And yet, at that point instead of standing 6 where you were and letting the car leave, you jumped up 7 on the sill of the car and shoved your body partially 8 inside the car? 9 A. That's correct. 10 Q. Even though you feared that you might get 11 pinned and drug? 12 A. Well, there's -- there's situations where 13 the -- other officers had occurred that I've seen videos 14 in training where an officer was actually drug getting 15 caught up on a seatbelt or the vehicle itself and drug 16 and caused serious bodily -- bodily injury to 17 themselves. So that was, you know, a fear that I had 18 that I would have been pinned or drug by the vehicle. 19 Q. And in that split second as your -- all this 20 is happening, that went through your mind and you -- you 21 used your training to jump up onto the car? 22 A. Yes. Time slows down and it seems like the 23 vehicle was in motion for a long period of time. So all 24 the training and -- and -- that we go through, it -- it 25 kind of kicks back in action and -- and you take action.</p>
<p style="text-align: right;">91</p> <p>1 Q. Okay. Would you say that as the car started 2 to move, you -- you -- the car door was pinning you in 3 position? 4 A. The car door was placed against my side. 5 Q. So did -- would you say that the car door was 6 pinning you in position at that point? 7 A. You said pinning? 8 Q. Yes. 9 A. It could be said that way. 10 Q. Okay. In your statement it says: As the 11 vehicle sped away, I felt the driver door closing on me 12 and started to feel that I was being pinned and going to 13 be drug. 14 Is that a correct statement? 15 A. Yes. 16 Q. Okay. And you felt that you were going to be 17 drug even though your feet were both on the -- on the 18 sill of the car? 19 A. As I noticed that he -- as I saw that he was 20 putting the vehicle in drive, I felt that if I did not 21 do what I did, which is to step on the doorsill, that 22 door could have pinned me, it could have like closed on 23 me and potentially had me -- drug me -- drug -- the 24 vehicle drug me. 25 Q. Okay. Then let's move back again because now</p>	<p style="text-align: right;">93</p> <p>1 Q. Okay. So as you were afraid of getting pinned 2 and drug, the action you took was to jump onto the car 3 as it's starting to move away, and is that when the door 4 started closing on you? 5 A. As the vehicle started to go forward, yes, the 6 door is -- it closed or started to close. 7 Q. So in fact, the -- your fear of being pinned, 8 the door was starting to pin you because of the position 9 you were in with the car? 10 A. Repeat your question. 11 Q. You said you were afraid of being pinned by 12 the car door, in fact, because you jumped on the sill 13 when the car -- when the door started closing, that did, 14 in fact, pin you? 15 A. If -- if I had both feet on the ground, the 16 door could have pinned me and then drug me. That's why 17 I stepped onto the doorsill. 18 Q. If you had simply stepped back at the point 19 before -- instead of jumping forward, what -- could you 20 have been pinned by that door? 21 A. I could have been injured by the door, yes, I 22 believe so. 23 Q. The door, you -- you believe the door would 24 swing so violently that -- around as the car started to 25 accelerate, that you would get shoved against the door</p>

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<p style="text-align: right;">94</p> <p>1 and drug?</p> <p>2 A. Everything happened so fast that that was a 3 thought.</p> <p>4 Q. Okay. So now the car is moving forward.</p> <p>5 You're up on top of it. You've got one arm out, one arm</p> <p>6 in with the gun. Where are you looking?</p> <p>7 A. I'm looking over the car.</p> <p>8 Q. Okay. You're -- are you looking forward to</p> <p>9 see where you're going?</p> <p>10 A. I was just looking straight.</p> <p>11 Q. Looking straight?</p> <p>12 A. Just straight, yeah.</p> <p>13 Q. Did you have any visibility of Ashtian Barnes</p> <p>14 at that point?</p> <p>15 A. No.</p> <p>16 Q. Did you have any idea where Ashtian Barnes was</p> <p>17 in the -- in the front seat of that car?</p> <p>18 A. Yeah. He was right next to me inside the 19 vehicle.</p> <p>20 Q. And how --</p> <p>21 A. In the driver's seat.</p> <p>22 Q. How could you tell that?</p> <p>23 A. Because I could feel him.</p> <p>24 Q. Okay. What -- what could you feel him with?</p> <p>25 A. Well, I could feel him with, you know, my</p>	<p style="text-align: right;">96</p> <p>1 A. No.</p> <p>2 Q. And -- and then you pushed your gun hand back</p> <p>3 inside the car, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And you fired?</p> <p>6 A. When I felt the pressure on my hand and my 7 gun, that's when my hand came out and as I was doing 8 that, I was losing balance so my hand went back in 9 there.</p> <p>10 Q. Okay.</p> <p>11 A. At that point, you know, if I would have 12 discharged my weapon fully, it would have hit him in the 13 head. So I made the conscious decision to point 14 downward and shoot.</p> <p>15 Q. But you don't really know where his head was</p> <p>16 at that point?</p> <p>17 A. I can assume that his head was right parallel 18 with me at that angle that I was holding my weapon at.</p> <p>19 Q. And for all you know, he could have been</p> <p>20 leaning away from you and trying to get out of the</p> <p>21 vicinity of that gun that had been pointed at his head</p> <p>22 correctly, right?</p> <p>23 A. Didn't know what he was doing.</p> <p>24 Q. Okay. You didn't know?</p> <p>25 A. Didn't know what he was doing.</p>
<p style="text-align: right;">95</p> <p>1 knee, and I could feel when my gun went to the side, pressure against my gun and hand.</p> <p>2 Q. Okay. So you could feel his body there with your knee, and you felt some kind of pressure against your gun and right hand?</p> <p>3 A. Uh-huh (Affirmative.)</p> <p>4 Q. But you can't see what's causing that pressure; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. So you don't know what was happening inside the vehicle at that time?</p> <p>7 A. I do not.</p> <p>8 Q. Okay. And at that point is your gun roughly in the vicinity of where you imagined Ashtian Barnes' head to be?</p> <p>9 A. Yes.</p> <p>10 Q. So you felt the pressure and then, as I understand it, you pulled your gun hand out of the car?</p> <p>11 A. That's correct.</p> <p>12 Q. And then at some point in here you shouted instructions for Ashtian Barnes; is that correct?</p> <p>13 A. That was as the vehicle was driving away.</p> <p>14 Q. And what instructions did you shout to him?</p> <p>15 A. "Fucking stop, fucking stop."</p> <p>16 Q. Did you say stop or I'll shoot?</p>	<p style="text-align: right;">97</p> <p>1 Q. At that point with no visibility as to what you were shooting at, you pulled the trigger?</p> <p>2 A. As I pointed downward, yes.</p> <p>3 Q. Okay. And then the car did not immediately start slowing, continued and so you pulled the trigger again?</p> <p>4 A. That's correct.</p> <p>5 Q. And at the point that you pull the trigger again, what happened to the car?</p> <p>6 A. The car came to an abrupt stop.</p> <p>7 Q. Did you stop the car?</p> <p>8 A. No.</p> <p>9 Q. Who stopped the car?</p> <p>10 A. Mr. Barnes did.</p> <p>11 Q. Let's wind back up. The car's taking off, you jump on board. Approximately how long is it between when you're fully on top of the sill of the car and you fire the first shot? Do you know?</p> <p>12 A. It must have been maybe two, three seconds, possibly. At that moment it felt like it was longer than that, though.</p> <p>13 Q. And how long was it between the first shot you fired and the second shot you fired?</p> <p>14 MS. BAKER: Objection, calls for speculation. You may go ahead and answer.</p>

25 (Pages 94 to 97)

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<p style="text-align: right;">98</p> <p>1 THE WITNESS: Okay.</p> <p>2 A. After I shot the first -- shot once and didn't 3 feel the vehicle was stopping, it's when I shot again. 4 So if I had to guess, a second.</p> <p>5 Q. (BY MR. FOMBY) Okay. A second. The car 6 comes to a complete stop, as you said, and in your 7 statement, Deputy, correct me if I'm wrong, didn't you 8 say that the vehicle slowed almost to a stop before you 9 jumped off?</p> <p>10 A. I don't recall. (Witness examines document.) 11 This is a misstatement, yes.</p> <p>12 Q. And at that point, you stepped back out of the 13 doorway and held your service weapon on Ashtian Barnes; 14 is that correct?</p> <p>15 A. That is correct.</p> <p>16 Q. Was Ashtian Barnes alive at that point?</p> <p>17 A. Yes, he was.</p> <p>18 Q. Was Ashtian Barnes saying help me, I can't 19 breathe at that point?</p> <p>20 A. I don't know what he said.</p> <p>21 Q. Is there a policy at the Constable's Office 22 for rendering aid when an individual has been shot?</p> <p>23 A. Yes, there is.</p> <p>24 Q. Did you at any point, after you fired your 25 service weapon, provide any kind of -- of assistance to</p>	<p style="text-align: right;">100</p> <p>1 Q. Was he lying on his side bleeding?</p> <p>2 A. No.</p> <p>3 Q. He was sitting up bleeding?</p> <p>4 A. He was sitting up.</p> <p>5 Q. So we see in the dash cam video, other police 6 cars arriving, one after another. How long was it 7 before anybody stopped to render aid to Ashtian Barnes?</p> <p>8 A. I'm not sure. After the third deputy arrived, 9 then I stepped back and moved away from the scene.</p> <p>10 Q. Okay. So why did you not immediately render 11 aid to Ashtian Barnes when the car stopped?</p> <p>12 A. Because the scene wasn't clear. I was -- he 13 could have gone for a weapon. And still at that point, 14 you know, he still, you know, you know, his eyes open 15 and -- so for me the scene is not clear.</p> <p>16 Q. There's a dash cam video in your car. You're 17 aware of that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And it was operating the entire time?</p> <p>20 A. Yes, sir.</p> <p>21 Q. According to the dash cam video, you were -- 22 you jumped out of the car, Ashtian Barnes' car at 23 14:45:52. Does that sound about right?</p> <p>24 A. I wouldn't -- I wouldn't know to tell you on 25 the exact time.</p>
<p style="text-align: right;">99</p> <p>1 Ashtian Barnes?</p> <p>2 A. I called for HFD to arrive on the scene.</p> <p>3 Q. Did you check on his wounds?</p> <p>4 A. No, I did not. The scene was not clear.</p> <p>5 Q. Approximately a minute and a half later when 6 the first deputy or police officer arrives on scene, and 7 at that point, according to a statement, he says Ashtian 8 Barnes was still alive. Is that your recollection?</p> <p>9 A. On his statement?</p> <p>10 Q. Yes.</p> <p>11 A. I've never seen his statement.</p> <p>12 Q. Was -- a minute and a half to two minutes 13 after the car stopped, was it your -- is it your 14 recollection that Ashtian Barnes was still alive?</p> <p>15 A. Yes.</p> <p>16 Q. That he was unresponsive? Would that be fair 17 to say?</p> <p>18 A. We weren't asking him anything and he wasn't 19 saying anything, so -- but he was still alive.</p> <p>20 Q. Was he sitting up and talking?</p> <p>21 A. No.</p> <p>22 Q. Was he shuffling papers around?</p> <p>23 A. No.</p> <p>24 Q. Was he reaching for anything?</p> <p>25 A. Not at that point, no.</p>	<p style="text-align: right;">101</p> <p>1 Q. That would be at least according to -- and we 2 know that these clocks are not always GPS accurate?</p> <p>3 A. Right.</p> <p>4 MS. BAKER: Object to sidebar.</p> <p>5 Q. (BY MR. FOMBY) So we -- we can't map the time 6 on that necessarily completely accurately, but the -- 7 the time on that is relatively accurate; is that 8 correct?</p> <p>9 MS. BAKER: Object to -- calls for 10 speculation, but you may answer.</p> <p>11 A. I believe so.</p> <p>12 Q. (BY MR. FOMBY) Okay. So at 14:45:52, which 13 is 2:45, almost 2:46, you -- you're out of the car 14 holding a gun on Ashtian Barnes. The first time anyone 15 mentions in the video CPR, was at 14:50:31 which is 16 approximately five minutes later. Does that sound about 17 right?</p> <p>18 A. I would have to look at the video to know what 19 time it was, like I said, but if that's what you say, I 20 mean...</p> <p>21 Q. We will look at the video and that sort of 22 thing. And --</p> <p>23 A. Right. Now CPR started before I called it out 24 on the radio. CPR already had a gun but I called in 25 ready from my position to make sure dispatch knew that,</p>

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<p style="text-align: right;">102</p> <p>1 you know, CPR was -- CPR was in progress.</p> <p>2 Q. Okay. And approximately how many police</p> <p>3 officers were on the -- so you -- you were -- you were</p> <p>4 securing the scene. I'm looking at a photograph that</p> <p>5 depicts the moment when the first officer says we need</p> <p>6 to do CPR and I'm counting, not including you, at least</p> <p>7 one, two, three, four, four or five officers on the</p> <p>8 scene. Does it require five officers -- other than you,</p> <p>9 not including you, to secure the scene before you</p> <p>10 perform CPR?</p> <p>11 A. Well, we're not trained medical professionals</p> <p>12 so what we do is we call for HFD and let the medical</p> <p>13 professionals -- I mean if we could render aid to a</p> <p>14 certain point with where we know what we're doing, like</p> <p>15 CPR, then we would do CPR. But other than that, I'm not</p> <p>16 a trained, you know, medical provider and I don't know,</p> <p>17 you know, anything about, you know, doing first aid</p> <p>18 on -- on a subject and I was -- I had already taken</p> <p>19 myself out of that -- that spot.</p> <p>20 Q. Right. Now Deputy, I -- I can understand</p> <p>21 that, but I'm not asking about whether or not at that</p> <p>22 point you performed CPR, but with a large number of</p> <p>23 officers on the scene, it took over -- it took well over</p> <p>24 five minutes for anybody to attempt CPR.</p> <p>25 MS. BAKER: I'm going to object to that</p>	<p style="text-align: right;">104</p> <p>1 to Ashtian Barnes at that point?</p> <p>2 A. They were on that side of the -- the scene, so</p> <p>3 I -- I don't know.</p> <p>4 Q. If that had been a colleague of yours in the</p> <p>5 Toyota, a peace officer, who Ashtian Barnes had shot,</p> <p>6 would you expect other police officers to come up and</p> <p>7 inquire and ask Ashtian if he's feeling okay rather than</p> <p>8 render aid to one of their fellow peace officers?</p> <p>9 MS. BAKER: Objection, argumentative,</p> <p>10 hypothetical.</p> <p>11 A. I don't know how to answer that. I know how I</p> <p>12 would do I guess what I thought was reasonable to --</p> <p>13 to -- while I could while HFD arrived.</p> <p>14 Q. (BY MR. FOMBY) And by the time the first EMS</p> <p>15 person showed up, you said that you had called that in?</p> <p>16 A. Correct.</p> <p>17 Q. You called in EMS. The first EMS person</p> <p>18 showed up at 14:56:12, which was a little less than</p> <p>19 approximately ten minutes after Ashtian had been shot.</p> <p>20 Are you aware of that?</p> <p>21 A. No.</p> <p>22 Q. And according to the EMS dispatch records, it</p> <p>23 took them approximately two minutes to arrive on the</p> <p>24 scene after they were notified. So when was EMS</p> <p>25 notified, actually notified that there was a person --</p>
<p style="text-align: right;">103</p> <p>1 because it's argumentative and it doesn't seem to be a</p> <p>2 question.</p> <p>3 Q. (BY MR. FOMBY) Is there -- leading to the</p> <p>4 question, is there a reason why all those officers would</p> <p>5 stand around and watch Ashtian bleeding to death instead</p> <p>6 of trying to render aid?</p> <p>7 MS. BAKER: Objection, calls for</p> <p>8 speculation and also misstates the facts in evidence at</p> <p>9 this time.</p> <p>10 A. I -- I wouldn't know how to answer that</p> <p>11 because, like I said, I took myself out of the -- the</p> <p>12 active scene and stepped back when the -- when the third</p> <p>13 officer arrived. So I can't, you know, say what time or</p> <p>14 how long it was before they started CPR. When I noticed</p> <p>15 they were doing CPR, is when I called it over the radio.</p> <p>16 Q. (BY MR. FOMBY) Okay. Now before this officer</p> <p>17 stopped -- stepped up and said we need to do CPR,</p> <p>18 several other officers came up to you and asked you if</p> <p>19 you were okay. Do you recall that?</p> <p>20 A. Yes.</p> <p>21 Q. And you told them that you were -- you -- you</p> <p>22 had banged your knee?</p> <p>23 A. My leg hurt.</p> <p>24 Q. So they were concerned about your wellbeing,</p> <p>25 but they still had not tried to render any kind of aid</p>	<p style="text-align: right;">105</p> <p>1 person who had been shot who was bleeding out?</p> <p>2 A. When -- after the incident the car came to a</p> <p>3 stop, I was able to get down, I called on the radio,</p> <p>4 "Shots fired, shots fired, get HFD en route now."</p> <p>5 Q. Okay. And yet eight minutes went by before</p> <p>6 they got the message. And do you know -- have any</p> <p>7 understanding of why it might have taken them eight</p> <p>8 minutes to get around to showing up?</p> <p>9 MS. BAKER: Object to that question as</p> <p>10 directed to this officer. It calls for speculation.</p> <p>11 Q. (BY MR. FOMBY) You know that particular</p> <p>12 stretch of the road, Deputy. How -- and -- and the</p> <p>13 traffic that day was fairly light. How long would you</p> <p>14 expect knowing where the fire stations are before a</p> <p>15 fire -- a fire engine to get there once they got the</p> <p>16 notice?</p> <p>17 A. I wouldn't know how to answer that question.</p> <p>18 I mean they -- they -- we don't deal with the HFD or the</p> <p>19 Houston Fire Department part of dispatch or their --</p> <p>20 their call center, so I wouldn't know to tell you if</p> <p>21 they would be down the road, they would be done there</p> <p>22 within a minute or they were at the station, they would</p> <p>23 be there -- I -- I have no idea --</p> <p>24 Q. Okay.</p> <p>25 A. -- as far as, you know, the exact time that it</p>

<p>1 would have taken them at that time of day. But within a 2 minute of -- about a minute of me requesting HFD the 3 first time, I keyed up again and said, you know, 4 "Confirming you have HFD in right -- en route" and our 5 dispatch confirmed that they were en route.</p> <p>6 (Exhibit No. 33 marked.)</p> <p>7 Q. (BY MR. FOMBY) Okay. And that is 33. 8 Deputy, I'm showing you what has been marked as 9 Exhibit 33. It's Bates number 77. And the officer 10 writing this was a B A Roberts. Do you know who B A 11 Roberts is?</p> <p>12 A. I do not.</p> <p>13 Q. In his report, the -- according to his report, 14 so if we look toward the end of this third paragraph in 15 his statement he says that: The suspect attempted to 16 flee in the vehicle and drug Deputy Felix approximately 17 twenty yards.</p> <p>18 Is that an accurate statement?</p> <p>19 A. Using the word "drug," no.</p> <p>20 Q. In fact, at no point were you ever drug during 21 this entire incident, did you?</p> <p>22 A. No, sir.</p> <p>23 Q. So you had mentioned earlier that the real 24 reason why you decided to pull your duty weapon and try 25 to stop Ashtian Barnes from leaving, is that you felt</p>	<p>1 definition of protecting another person from imminent 2 death or serious bodily injury?</p> <p>3 A. Myself or others.</p> <p>4 Q. Okay. So you're standing there with a gun. 5 Was the tollway empty at that time?</p> <p>6 A. No.</p> <p>7 Q. Were there, in fact, a number of cars going 8 back and forth?</p> <p>9 A. There was traffic, yes.</p> <p>10 Q. And when you leaned forward with -- with your 11 body, with the gun, and before the car had left, did you 12 have any certainty that if you pulled the trigger, that 13 bullet would not have left the veh -- Ashtian's vehicle 14 and struck another vehicle?</p> <p>15 A. I wouldn't fire -- have fired at the vehicle 16 at that time unless I had direct sight of my target.</p> <p>17 Q. And is it, in fact, dangerous to fire in the 18 direction of a target when there are innocent third 19 parties that could be struck by the bullet?</p> <p>20 A. Repeat your question.</p> <p>21 Q. Isn't it, in fact, dangerous to fire a shot at 22 a -- at a target when there are innocent third parties 23 who could be struck by that bullet?</p> <p>24 A. Well, anytime you fire a weapon it's 25 dangerous, so whether there's an individual or not...</p>
<p>107</p> <p>1 that he was a risk to the general public?</p> <p>2 A. That is correct.</p> <p>3 Q. Okay.</p> <p>4 A. Along with leaving the scene, you know, in a 5 motor vehicle is a felony charge. You know, it is 6 evading, you know, so you know, not to, you know, go 7 that route, you know, that's why I drew my weapon.</p> <p>8 Q. Now, according to policies of the Constable's 9 Office, when are you allowed to draw your duty weapon, 10 your service weapon and under what circumstances are you 11 allowed to draw it and point it at a person?</p> <p>12 A. Anytime I think it's reasonable, I fear -- I'm 13 in fear for my safety or the safety of others.</p> <p>14 Q. Now you've been trained in the policies of 15 your department, haven't you?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And in fact, haven't you been trained that it 18 is in -- inappropriate to draw -- to use any form of 19 deadly force unless the individual that you're pointing 20 the gun at -- unless it's to protect themselves or 21 another person from imminent death and serious bodily 22 injury?</p> <p>23 A. That's correct.</p> <p>24 Q. And you felt that with you standing beside the 25 car, Ashtian Barnes driving away, would meet that</p>	<p>109</p> <p>1 Q. That's not the question I'm asking you, 2 Deputy. I'm saying that, isn't -- aren't you trained -- 3 are you trained not to discharge a weapon when there are 4 innocent third parties that could be struck by the 5 bullet?</p> <p>6 A. We're trained and we're responsible for every 7 bullet that leaves that -- that weapon, so if your line 8 of sight is not clear, you do not discharge your weapon.</p> <p>9 Q. Okay. At all. Are you trained and is it the 10 policy of the department to -- that you should not fire 11 at a moving vehicle?</p> <p>12 A. I wasn't firing at a moving vehicle. I fired 13 while the vehicle was in motion with me on it.</p> <p>14 Q. I'm sorry, Deputy.</p> <p>15 A. There's a difference.</p> <p>16 Q. You're in a car that is moving, and what are 17 you -- what are the policy -- why do you think the 18 policy guideline says you don't fire at a moving 19 vehicle?</p> <p>20 MS. BAKER: Objection, calls for 21 speculation.</p> <p>22 Q. (BY MR. FOMBY) You have been trained, you say 23 you've been trained, that this department has trained 24 you in the policy, then they should have trained you in 25 the reason for that policy. What reasons were you given</p>

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1 for not firing in a moving vehicle? 2 MS. BAKER: Object to sidebar. 3 A. When you shoot at a vehicle that's either 4 coming towards you or moving away from you, you know, 5 a -- depending on -- on the type of ammunition that you 6 carry, depending on the position you're in, ricochets 7 can happen, meaning it can bounce off the vehicle and go 8 in the direction that wasn't intended, you know, because 9 it is metal or, you know, some type of composite that 10 will make a -- a bullet, you know, ricochet. So that's 11 the reason why the policy says you don't discharge a 12 weapon at moving vehicles. 13 Q. (BY MR. FOMBY) Is that the only reason? 14 A. I -- I can assume that that's what it is. 15 Q. Okay. How about -- is a car moving at 16 reason -- reasonable speed considered a deadly weapon, a 17 potential deadly weapon? 18 A. If it's moving towards a person, yes. 19 Q. Why is that? 20 A. Because of the size of the vehicle and the -- 21 the injury that could cause to someone, severely 22 injured, severely injure someone or kill them. 23 Q. Is a car that is moving obliquely to high 24 speed traffic dangerous to the -- to that traffic? 25 A. Yes.	110 1 MR. FOMBY: Have you stamp it. 2 THE REPORTER: Exhibit 34. 3 (Exhibit No. 34 marked.) 4 Q. (BY MR. FOMBY) I want you to turn to page 48. 5 A. (Witness complies.) 6 Q. And there's -- paragraph 5. 7 A. Okay. 8 Q. So paragraph 5, does it say -- that you asked 9 me where it says in the policy you shouldn't shoot from 10 a moving vehicle. 11 A. Right. 12 Q. You see that? 13 A. Uh-huh (Affirmative.) 14 Q. Would you agree that that -- that is the 15 policy of your force? 16 A. And this is referring to while you're 17 operating a motor vehicle and moving in a vehicle. 18 Q. I'm sorry, Deputy, I don't read that. It 19 says: Do not discharge it from a moving vehicle or at a 20 fleeing vehicle. 21 It doesn't have any conditions? 22 MS. BAKER: Object to sidebar. 23 Q. (BY MR. FOMBY) So does it say do not fire 24 from a moving vehicle? 25 A. That's correct. Do not discharge firearm from
111 1 Q. And why is that? 2 A. Because that you could cause, you know, injury 3 to someone else. 4 Q. So isn't it true that one of the reasons why 5 you don't fire at a moving vehicle, is that if you 6 disable the driver, you cannot guarantee what that car 7 is going to do? 8 A. That could be a part of it. 9 Q. Because you shoot that person and that doesn't 10 necessarily stop the car, does it? 11 A. That's correct. 12 Q. And the policy of not shooting from a moving 13 vehicle, why is -- what is the reason for that policy? 14 A. From a moving vehicle? 15 Q. Correct. 16 A. Which -- do you mind showing me the policy 17 you're referring to? 18 Q. I'll -- I'll dig it out, but there is a 19 general -- generalized policy of never shooting from a 20 moving vehicle. Why is that? 21 A. And this is a Precinct 5 policy? 22 Q. It's a Precinct 5 policy. 23 A. Can I see that, please? 24 Q. Okay. I am showing you -- okay. I'm going to 25 reassemble this and show you the general policies.	113 1 a moving vehicle. 2 Q. I want you to move to the page before, No. 47. 3 A. There's no 47. 4 Q. There should be a page before it. 5 A. Okay. It's out of order. Okay. 47. 6 Q. Okay. Paragraph one, what does that say? 7 A. Wait, I'm sorry, which section? 8 Q. Section B, Rules, paragraph 1. 9 A. Okay. The policy stated above is the basis of 10 the following set of rules that have been designed to 11 guide deputies in cases involving the use of firearms. 12 Q. I said paragraph number 1. They're numbered, 13 Deputy. 14 A. Line number 1? 15 Q. Yes, Deputy. 16 A. Deputies shall not discharge a firearm except 17 to protect themselves or another person from imminent 18 death or serious bodily injury. 19 Q. What does paragraph numbered 2 say? 20 A. Deputies shall discharge their firearm only 21 when doing so will not endanger innocent persons. 22 Q. How about the one numbered 3? 23 A. Deputies shall not discharge their firearms to 24 threaten or subdue persons whose actions are destructive 25 to property or injurious to themselves but which do not

<p style="text-align: right;">114</p> <p>1 prevent -- represent an imminent threat of death or 2 serious bodily injury to the deputy or others. 3 Q. How about paragraph number 4? 4 A. Deputies shall not discharge their firearms to 5 subdue an escaping suspect who represents no imminent 6 threat of death or serious bodily injury. 7 Q. And looking at all of those, what is the 8 reasoning behind those rules? 9 A. It's a guideline for when to use your firearm. 10 Q. And isn't the -- the basic reasoning behind 11 those, that the use of deadly force, discharging a 12 firearm, is a last resort option? 13 MS. BAKER: I'm going to object to that 14 question as directed to this witness because this 15 witness, there's no evidence this witness prepared the 16 policies, so if you want to ask a Precinct 5 witness 17 about what the -- the basis is for the policy -- 18 MR. FOMBY: I understand your objection. 19 He took a class on de-escalation of force. He's taken a 20 number of classes, as he has already pointed out, on the 21 proper use of firearms, tasers, batons and other uses of 22 force. So I'm asking him if he took a class on 23 de-escalation of force, part of that class material 24 would have reasoning for why it is that using a -- 25 firing a firearm is a last option.</p>	<p style="text-align: right;">116</p> <p>1 Q. When you were on -- on the ground, as you were 2 stepping onto the doorsill. 3 A. That would be incorrect. 4 Q. Where was your gun pointed at that particular 5 point? 6 A. As I was reaching inside the vehicle my weapon 7 was back like this, and as I was reaching it, I'm not 8 going to leave my hand extended, you know, at that 9 point. You -- you retract your gun, you retract your 10 hand and you keep it at this position until the threat 11 is -- is gone or threat is, you know, assessed. 12 Q. So your testimony right now under oath is that 13 as you were reaching into the vehicle, you had your 14 firearm back in this position (Indicating)? 15 A. As I was going into the vehicle, that's what I 16 recall, yes. 17 MR. FOMBY: Do you mind if we take a 18 five-minute break? 19 MS. BAKER: No. 20 THE VIDEOGRAPHER: The time is 1:32 p.m., 21 we're off the record. 22 (Off the record.) 23 THE VIDEOGRAPHER: The time is 24 approximately 1:43 p.m., we're on the record. 25 Q. (BY MR. FOMBY) Deputy, previously we talked</p>
<p style="text-align: right;">115</p> <p>1 Q. (BY MR. FOMBY) Why is that reasoning? 2 A. Firing a firearm is not the last option. 3 MS. BAKER: No. 4 A. It's an option. 5 MS. BAKER: It's an option. 6 Q. (BY MR. FOMBY) In this case, what is more 7 dangerous -- what is a higher level of escalation of 8 force than firing a firearm? 9 A. The highest level is the firearm. 10 Q. Okay. So when Ashtian Barnes was putting the 11 car in gear to leave, you -- you drew your firearm and 12 pointed it at his head; is that correct? 13 A. That is incorrect. 14 Q. I think you have already said that you pointed 15 it at his head? 16 A. When -- 17 MS. BAKER: I'm going to object to that 18 because it totally misstates his testimony. 19 A. When I first drew my weapon, my weapon was not 20 pointed directly at his head. It was pointed at him. 21 Q. (BY MR. FOMBY) Okay. We have a video that 22 shows the weapon entering the back window, visibility -- 23 visible back window with Ashtian's head leaning away 24 from it. Have you seen the video? 25 A. When I was on the -- on the doorsill?</p>	<p style="text-align: right;">117</p> <p>1 about the whole issue of escalation of force, or 2 de-escalation of force, correct? 3 A. Okay. 4 Q. What -- and you took a class in 2018 on 5 de-escalation of force; is that correct? 6 A. That's correct. 7 Q. And in that class, why were you told 8 de-escalation of force was important? 9 A. In certain situations you can use different 10 tactics to de-escalate the situation, either by, you 11 know, talking to someone or by, you know, to make sure 12 that they kind of -- to make sure that they, you know, 13 can calm down and bring the situation back to a level 14 where you can, you know, address the situation at hand. 15 Q. Okay. And in that class, were you taught that 16 de-escalation of force is an important tool to prevent 17 situations from going out of control? 18 A. That's correct. 19 Q. Okay. And as part of that, you -- I think the 20 class was techniques. So you were taught different 21 techniques for de-escalating a situation, correct? 22 A. Different techniques were taught, yes. 23 Q. In that -- all right. You were also taught 24 the escalation levels of how and when it is appropriate 25 to go from one level of force or -- or authority to</p>

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1 another level of force or authority. Is that fair to 2 say? 3 A. Well, ideally, you know, yeah, if you can 4 follow the -- the levels, it would be, you know, a 5 perfect world. You know, this is not a perfect world, 6 so you can be speaking, you know, with someone one time 7 at the moment and have to use deadly force in the next, 8 or you could be talking to them and you go hands on. 9 So in a perfect world, you know, you could 10 use, you know, these low levels of -- of force, but, you 11 know, sometimes you can't. Sometimes you just have to, 12 you know, transition to a higher level of force. 13 Q. Okay. A classic example where you might want 14 to de-escalate would be, say, a boyfriend and girlfriend 15 situation where they've got an argument going on. Would 16 that be a good example? 17 A. Okay. 18 Q. And where you want to separate the two of them 19 and calm them down, to calm down the situation. Is that 20 one of the techniques they taught you? 21 A. Correct. 22 Q. Or when we have someone who has mental illness 23 and you need to deal with their mental illness and calm 24 them down so that they don't spin out of control, would 25 that be another good example?	118 120 1 baton; is that right? 2 A. Correct. 3 Q. You've been taught how to use a taser? 4 A. Correct. 5 Q. I'm sure that there are other similar tools 6 and skill sets that they've given you in these classes 7 so that you don't have to get to the lethal weapon 8 category. Is that -- is that fair? 9 MS. BAKER: Objection, vague. 10 A. It -- there's situations where, you know, like 11 I said, ideally in a perfect world, you know, level of 12 escalation, but you know, real world is from one second 13 to another, it's, you know, it could be zero to a 14 hundred. You know, where you having to transition from 15 just presence to, you know, displaying a firearm or -- 16 or... 17 Q. (BY MR. FOMBY) And displaying a firearm by 18 itself is a level, is an escalation level to warn people 19 of imminent danger; is that right? 20 A. That's correct. 21 Q. Okay. So -- and -- and I understand what 22 you're saying, that you don't have to walk through the 23 steps, right? 24 A. Correct. 25 Q. Is that what you're saying?
119 1 A. Yes. 2 Q. Now, but as you said, sometimes you can't -- 3 the situation doesn't merit or doesn't work with -- you 4 can't de-escalate it. So certain circumstances you have 5 to use escalating levels of force and authority; is that 6 true? 7 A. That's correct. 8 Q. And one of the first levels would be simply 9 your presence on the scene. Would that be fair? 10 A. Yes. 11 Q. That a police officer or deputy constable by 12 the fact that they're there and have a uniform, that 13 usually warns people and gets them calmed down; is that 14 correct? 15 A. Correct. 16 Q. The second method might be using your 17 authoritative voice in orders, right? 18 A. Uh-huh (Affirmative.) Yes. 19 Q. So in this case telling someone stop shuffling 20 around, that would be a way of trying to control them 21 without having to use further levels of force? 22 A. Correct. 23 Q. Now, we've also talked about other tools that 24 you've been taught as part of that escalation, 25 de-escalation problem. You've been taught how to use a	121 1 A. That's correct. 2 Q. That you can go from step three to step ten if 3 you have to under the circumstances. Is that what 4 you're saying? 5 A. That is correct. 6 Q. But in this situation, when your command 7 arguments were not working, did you attempt to use your 8 baton? 9 A. No. 10 Q. Did you attempt to use your taser? 11 A. If I recall I don't think tasers were issued 12 yet. 13 Q. Okay. 14 A. I don't recall, but... 15 Q. But you've been trained on tasers for several 16 years? 17 A. That's correct. The -- the -- just the way 18 the situation escalated and rapidly evolved, there was 19 no time -- there wasn't time to deploy those level of 20 force. 21 Q. I noticed that your taser is mounted so that 22 your right hand can naturally fall on it and pull it 23 straight out; is that correct? Is that how it's 24 intended? 25 A. No. No, there's a -- there's a locking

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<p style="text-align: right;">122</p> <p>1 mechanism and you have to rock back and then up in order 2 to --</p> <p>3 Q. Okay.</p> <p>4 A. -- to deploy it.</p> <p>5 Q. Is there a locking mechanism on your firearm 6 to keep it from falling out?</p> <p>7 A. Yes, there is.</p> <p>8 Q. And your firearm is actually located where you 9 have to actually bend your elbow back to reach to it?</p> <p>10 A. Correct.</p> <p>11 Q. And in this particular instance when you were 12 concerned that Ashtian Barnes might leave, you did not 13 pull your taser; is that correct?</p> <p>14 A. I don't recall if we were issued tasers at 15 that point yet.</p> <p>16 Q. But no taser was pulled at that time?</p> <p>17 A. That's correct.</p> <p>18 Q. Let's return to the moment where you decided 19 to fire your weapon. You said that you had no 20 visibility as to what you were actually firing at; is 21 that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. You thought you might be firing it into his 24 body, Ashtian Barnes' body?</p> <p>25 A. I did.</p>	<p style="text-align: right;">124</p> <p>1 vehicle until the -- the -- you know, you can bring it 2 to a safe stop.</p> <p>3 Q. I see. So your training is that you can, 4 sitting on the sill of the car with one arm out and the 5 other hand holding a gun, you can somehow, as the car 6 veers off into the tollway, jump down in there on top of 7 his body and push a foot out and hopefully -- where is, 8 by the way, the emergency brake on a Toyota Corolla?</p> <p>9 MS. BAKER: Objection, argumentative.</p> <p>10 Was the question where is the emergency brake on -- on a 11 Toyota Corolla?</p> <p>12 MR. FOMBY: No, I would just -- just a 13 pause.</p> <p>14 Q. (BY MR. FOMBY) Where is the emergency brake 15 on a Toyota Corolla?</p> <p>16 A. Most brakes are located in the bottom left of 17 the driver side area.</p> <p>18 Q. Most -- most brakes?</p> <p>19 A. Most brakes.</p> <p>20 Q. Do you know where -- where the brake was?</p> <p>21 A. I do not.</p> <p>22 Q. So what you're telling me is that if you had 23 immobilized Ashtian Barnes in the car had swerved under 24 condition, you actually did not have a plan for how to 25 stop the car from hitting everybody else?</p>
<p style="text-align: right;">123</p> <p>1 Q. But you -- you had no way of being sure?</p> <p>2 A. That's correct.</p> <p>3 Q. What would have happened if you had missed 4 Ashtian and the bullet ricocheted out into the tollway?</p> <p>5 Would that put other people at danger?</p> <p>6 MS. BAKER: Objection, irrelevant, calls 7 for speculation.</p> <p>8 Q. (BY MR. FOMBY) Earlier you -- you said that 9 one of the reasons -- the primary reason you don't fire 10 at moving vehicles is a risk of ricochet. So in this 11 case, if it had ricocheted, would -- would that have put 12 people at risk?</p> <p>13 A. The -- the way that I positioned the weapon, 14 there wasn't a chance for ricochet because it was a 15 straight downward motion, so anything that would have 16 been fired in that vehicle would have stayed in that 17 vehicle in a downward motion.</p> <p>18 Q. All right. When you -- when you shoot an 19 individual who's operating a car at a reasonable rate of 20 speed, what happens if you disable that person while 21 they're driving the car?</p> <p>22 A. At that point you would have to take, you 23 know, different measures to make sure you get, you know, 24 control of that vehicle, reaching for the emergency 25 brake, pressing the emergency brake, steering the</p>	<p style="text-align: right;">125</p> <p>1 A. At that moment that wasn't an issue. Once the 2 vehicle came to a stop, I was able to -- to get off the 3 vehicle and ordered him to put the car in park.</p> <p>4 Q. As you said that you -- once you shoot 5 someone, if that person is immobilized and can no 6 longer -- is no longer driving the car, you said that 7 your job then is to get into the car somehow and figure 8 out a way to put the emergency brake on and -- and bring 9 it to a stop?</p> <p>10 A. Well, you said what would I do and that would 11 be my next -- be my next form of action, is to try to 12 get that car to stop.</p> <p>13 Q. So that's your plan of action after you shot 14 him, that if this thing veer -- his car veered into that 15 tollway traffic, that you were going to somehow pull a 16 Rambo move and get down into the car and bring it to a 17 stop?</p> <p>18 MS. BAKER: I'm going to object to the 19 argumentative nature of that question, and also to vague 20 because I'm not clear what a Rambo move is.</p> <p>21 MR. FOMBY: A Rambo is a character from 22 the movies.</p> <p>23 MS. BAKER: You don't need to tell me. 24 Yes, sir, I know.</p> <p>25 MR. FOMBY: You were not clear on it, so</p>

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<p>1 I need -- you need -- 2 MS. BAKER: Okay. 3 MR. FOMBY: -- you obviously need to be 4 educated about one of the most popular movies in the 5 history of filmdom. 6 MS. BAKER: Oh, yeah, no, I know who 7 Rambo is, I just don't know which specific scene or move 8 you are referring to. 9 Q. (BY MR. FOMBY) So that -- that -- you 10 formulated this plan that if you shot him and 11 immobilized him, you were somehow going to get control 12 of this vehicle? 13 A. My -- my actions were based on what was 14 happening at that time. So I can speculate, I can, you 15 know, say that I would have done this or I could have 16 done that, but at that time when, you know, I discharged 17 my weapon, the vehicle did come to a stop and I was able 18 to at that point get out -- get off the vehicle. 19 Q. When you fired the second time into Ashtian 20 Barnes, he brought the car to a stop? 21 A. That's correct. 22 Q. But what I'm saying is, what if he had been 23 immobilized, because you're traveling at high speed next 24 to a bunch of cars. Did you actually have a plan when 25 you pulled that trigger to not put all of those people</p>	<p>126</p> <p>1 coming towards me from inside the vehicle, you know, to 2 attempt to get in the vehicle to steer the vehicle or, 3 you know, whatever needed to be done to get that vehicle 4 to stop. But like I said, that didn't happen so we 5 can -- I can just assume what could have or I would have 6 done at that point. 7 Q. Isn't that, Deputy, why we have policies, so 8 that people don't have to at that moment make crit -- 9 split-second decisions about what they're going to do? 10 MS. BAKER: Object to the argumentative 11 nature of that question, and also this is not a person 12 who makes policy -- who makes policies. If you know, if 13 you can answer it, you can. 14 A. I don't know. I mean the policies are set for 15 a reason, you know. At no time did I violate a Precinct 16 5 policy, you know, by attempting to -- fleeing -- you 17 know, this fleeing person. 18 Q. (BY MR. FOMBY) There's a policy that says 19 thou shalt not fire at a moving vehicle. Did you fire 20 at a moving vehicle? 21 A. Okay. That -- that -- that question there 22 is -- I fired while being on a vehicle and the vehicle 23 was moving in a -- in a direction where it didn't put 24 anyone else in harm's way, you know, shooting the 25 weapon in a direction where it would have struck someone</p>
<p>127</p> <p>1 on that tollway at grave risk of death or injury? 2 MS. BAKER: Object to argumentative 3 nature, also asked and answered. 4 A. That -- the vehicle at that point had began to 5 take off and that's why the -- the shots were made 6 there. If he would have gone to a higher speed, it 7 would have been a different situation. I could have 8 definitely been, you know, seriously injured or killed 9 at that point, you know, by any of, you know, his 10 further actions that, you know, he -- he intended on by 11 driving away from -- from the scene with me hanging onto 12 a vehicle. 13 Q. (BY MR. FOMBY) You stated before that you 14 felt that you were at risk because you were being pinned 15 and you didn't know what was going to happen. If simply 16 being pinned to the car is a dangerous situation, how 17 does taking -- being in a car that's veering out of 18 control into a tollway put you in a better condition for 19 being able to get inside that car and change what's 20 happening? 21 A. We can I guess sit here and assume all day 22 long and sit on something that, you know, could have 23 happened that didn't happen, you know. I could have, 24 you know, stepped on the emergency brake or at that 25 point when there was no, you know, pressure or force</p>	<p>129</p> <p>1 else. 2 Q. You're saying that shooting the driver of the 3 car while it's op -- operating at a high speed, does not 4 put anyone in harm's way? 5 MS. BAKER: Objection, misstates his 6 testimony. 7 A. I'm not sure what the speed was, but it was 8 something that, you know, that shooting at Mr. Barnes 9 for him to stop the vehicle is -- was the intended, you 10 know, part was to stop the threat. 11 Q. (BY MR. FOMBY) One of the methods of -- one 12 of the levels of escalation is to issue a verbal 13 warning. I believe in the policies it suggests that one 14 of the things you do before you fire is to give a 15 warning before you fire. Did you warn him stop or I'll 16 shoot? 17 A. There is no policy that says that you have to 18 give a warning to an individual before you fire a 19 weapon. 20 Q. Did -- did you warn him stop or I'll shoot? 21 A. I never warned him that I would shoot. 22 Q. Okay. Now, the reason -- we have these 23 policies and we have some policies that we've talked 24 with handguns there are other policies that are out 25 there.</p>

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<p style="text-align: right;">130</p> <p>1 MR. FOMBY: I'm going to hand this to 2 you. 3 (Exhibit No. 35 marked.) 4 Q. (BY MR. FOMBY) This is Exhibit 35 and these 5 are reprimand records from the Constable Precinct 5's 6 Office. Who's being reprimanded in these records? 7 A. That's myself. 8 Q. Okay. And in this case, May 18, 2005, the -- 9 the first page here, which is Bates numbered 1729, it 10 said that -- what was it that you failed to do? 11 A. Complete time sheets. 12 Q. Okay. And what was the -- what was the 13 penalty for your failure to complete your time sheets? 14 A. It says one-day suspension. 15 Q. And in that paragraph that says one-day 16 suspension, what does that second paragraph say? 17 A. The investigation revealed that you were 18 negligent in failing to complete several time sheets. 19 You have had ample time to conform to the requirement in 20 completing a time sheet. 21 Q. Actually I told you -- I referred to the -- to 22 where you said there was a one-day suspension. What's 23 the second sentence in that paragraph? 24 A. Any further such behavior will result in much 25 more severe disciplinary action, up to and including</p>	<p style="text-align: right;">132</p> <p>1 A. During the suspension you're not permitted to 2 represent yourself as a peace officer. Furthermore, 3 extra employment during suspension is disallowed. 4 Q. And again it says: Any further such behavior 5 will result in more severe disciplinary action, up to 6 and including termination. 7 Is that correct? 8 A. That's correct. 9 Q. Okay. Let's turn to the next page, Bates 10 stamped 1731. 11 A. (Witness complies.) 12 Q. And who is this directed toward? 13 A. Myself. 14 Q. Okay. It's dated January 11th, 2008. And why 15 were you being reprimanded here? 16 A. For loss of equipment. 17 Q. And what was the punishment for this mistake? 18 A. One-day suspension. 19 Q. And again, they warned you that any further 20 such behavior could lead to termination? 21 A. Correct. 22 Q. Bates stamp 1732 references a violation of 23 S.O.P. 100-2.09. What was this incident about? 24 A. It was showing myself out on a -- on a call 25 before arriving.</p>
<p style="text-align: right;">131</p> <p>1 termination. 2 Q. So as I understand this, the improper 3 completion of time sheets led to a one-day suspension 4 and the threat of possible termination in the future 5 if -- if you're -- if you didn't correct your behavior; 6 is that correct? 7 A. That -- that's standard for any disciplinary 8 actions. 9 Q. Is that a yes? 10 A. Yes. 11 Q. Okay. On the next page, Bates number 1730, 12 dated August 8, 2006, who was this reprimand directed 13 toward? 14 A. Myself. 15 Q. Okay. And what is it that the reprimand says 16 that you failed to do? 17 A. I didn't utilize my microphone as required, 18 according to policy and procedures for the mobile vision 19 in car video system dated May 3rd, 2004. 20 Q. And in the third paragraph there, what was the 21 reprimand? What was the punishment for failing to do 22 so? 23 A. One-day suspension. 24 Q. Okay. And was there -- what's that second 25 paragraph? Is there a further warning?</p>	<p style="text-align: right;">133</p> <p>1 Q. Okay. 2 A. As I was turning the corner. 3 Q. So what is that exactly? You didn't arrive 4 but you -- you wrote up that you had arrived? 5 A. No. We have an arrive button on our -- on our 6 computer. 7 Q. Uh-huh (Affirmative.) 8 A. On our old system. So as I was turning the 9 corner to clear myself out, I hit the arrive button and 10 then I cleared it but stayed on scene talking to the -- 11 to the resident. 12 Q. And for this you received a temporary 13 suspension for two days; is that correct? 14 A. That's correct. 15 Q. And you were advised that you could not take 16 any kind of police action or carry or wear any 17 departmental-issued equipment? 18 A. That's correct. 19 Q. During this period? 20 A. That's correct. 21 Q. And again: Any further such behavior will 22 result in more severe disciplinary action, up to and 23 including termination. 24 Is that correct? 25 A. That's correct.</p>

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<p style="text-align: right;">134</p> <p>1 Q. So we have here some situations where you 2 filled out a timecard wrong, you forgot to turn 3 on the microphone, you misplaced your radar and you 4 pushed a button too early. In each of these cases you 5 got written up and you received at least a one-day 6 suspension; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. In this particular instance that we're talking 9 about, the shooting of Ashtian Barnes, did anyone talk 10 to you about your decision-making regarding pulling your 11 hand -- your service weapon to keep him from leaving?</p> <p>12 A. No.</p> <p>13 MS. BAKER: Do you mean anyone at 14 Precinct 5 or are you talking about during the 15 investigation?</p> <p>16 Q. (BY MR. FOMBY) Anyone at Precinct 5?</p> <p>17 A. No.</p> <p>18 Q. Did anyone in the DA's office specifically 19 talk to you about your decision-making about why you did 20 that?</p> <p>21 A. During the investigation, you know, just the 22 actions leading up to the incident.</p> <p>23 Q. Did you have any further training regarding 24 that particular -- how to handle that particular 25 situation in the future?</p>	<p style="text-align: right;">136</p> <p>1 Q. The decision to hold a gun on Ashtian Barnes 2 as he was bleeding out and asking for help, without 3 providing help, did anyone talk to you from the 4 Constable's Office, your chain of command, talk to you 5 about what your thinking was and whether that was 6 appropriate?</p> <p>7 MS. BAKER: Objection, mischaracterizes 8 his testimony, but you may answer.</p> <p>9 A. That was never discussed because I did ask for 10 medical attention for Mr. Barnes right after the 11 shooting occurred and again about a minute later 12 confirmed that HFD was en route.</p> <p>13 Q. (BY MR. FOMBY) So to summarize, after this 14 incident did you receive any kind of specialized 15 training regarding what happened during this event?</p> <p>16 A. No.</p> <p>17 Q. Did you receive any kind of counseling 18 regarding this event?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Psychological counseling?</p> <p>21 A. It was a counseling dealing with the incident 22 itself.</p> <p>23 Q. Okay. And what was the nature of that 24 counseling? And you don't have to go into anything 25 personal but --</p>
<p style="text-align: right;">135</p> <p>1 A. No.</p> <p>2 Q. Did -- were you at all reprimanded for pulling 3 your -- your service revolver to keep someone from 4 leaving the scene?</p> <p>5 A. No.</p> <p>6 Q. Same question with jumping on board a moving 7 vehicle. Did anyone, Precinct 5 or Harris County in 8 your chain of command, talk to you about whether that 9 was appropriate?</p> <p>10 A. No.</p> <p>11 Q. And did you ever receive any training after 12 the fact about how to handle that situation in the 13 future?</p> <p>14 A. We've -- the department has had training 15 involving high-risk stops, but nothing specific to that 16 incident.</p> <p>17 Q. Okay. The decision to fire your bullet, fire 18 your gun at the driver of a car on the tollway, did -- 19 did anyone in your chain of command, anyone at the 20 Constable's Office speak to you about that decision 21 and -- and discuss whether that was a good idea?</p> <p>22 A. No.</p> <p>23 Q. And no -- no additional training on how to 24 handle that situation?</p> <p>25 A. No.</p>	<p style="text-align: right;">137</p> <p>1 MS. BAKER: Yeah, we're getting pretty 2 close.</p> <p>3 Q. (BY MR. FOMBY) Is it about your -- your 4 feelings or about preparing you for future situations?</p> <p>5 A. It's just -- we talked about the incident and 6 just the way that things were I guess related to work 7 and just personal stuff.</p> <p>8 Q. Okay. After the shooting which occurred on 9 the afternoon of April 28th, 2016, when were you 10 released to return -- I -- I assume that there was a 11 temporary -- you were put on temporary leave; is that 12 correct?</p> <p>13 A. No, that's incorrect. I was never on leave. 14 I was offered a desk position for however amount of 15 time -- amount of time that, you know, I needed.</p> <p>16 Q. And did you take that offer?</p> <p>17 A. I did.</p> <p>18 Q. And how long were you on the desk position?</p> <p>19 A. About two weeks.</p> <p>20 Q. Okay. And was that a mandatory offer or was 21 that an offer to help you with the situation?</p> <p>22 A. Well, the initial -- it would be three days is 23 mandatory from -- there's actually no policy, but three 24 days that they tell you to, you know, kind of I guess 25 for investigation purposes make sure that whatever they</p>

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<p>138</p> <p>1 need to do on their end, but normally it's three days 2 after a shooting.</p> <p>3 Q. Okay. Three days to be on desk duty?</p> <p>4 A. Right.</p> <p>5 Q. Okay.</p> <p>6 A. Desk duty or be off.</p> <p>7 Q. At this point we received a video from Harris 8 County that was the dash cam of your -- of your squad 9 car.</p> <p>10 A. Okay.</p> <p>11 Q. And I have some close-ups of this but I first 12 want to run through this. Have you seen this video at 13 all before?</p> <p>14 A. Yes.</p> <p>15 Q. Have you seen it recently?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So I want to kind of walk through here 18 and see this as -- without stopping it all the way 19 through.</p> <p>20 A. Right.</p> <p>21 Q. Because I think it helps us to put this in 22 context instead of chopping it up.</p> <p>23 MS. BAKER: Let me ask you this before we 24 get started with that. Are you intending on attaching 25 it as an exhibit? I know you have the separate</p>	<p>140</p> <p>1 Q. Okay. I don't want to move in on you too 2 much, but let's see where it is. Okay. I'm just going 3 to be -- okay. We can just see a little bit closer.</p> <p>4 Okay. Now, to set the scene, this is April 28, 2016.</p> <p>5 The time on the dash cam is 14:42:46, and I believe when 6 this starts the audio is not on.</p> <p>7 A. That's correct.</p> <p>8 Q. What -- what causes the audio to come on in 9 this situation?</p> <p>10 A. The audio is -- or the video is recorded, I'm 11 not sure if it's 30 seconds or a minute prior to the 12 lights turning on, so it's a continuous recording as far 13 as when I hit my lights it goes back 30 seconds or a 14 minute and then it starts recording, and audio will come 15 on as the lights are -- are turned on.</p> <p>16 Q. Okay. And what -- what would turn the -- the 17 video off at some point?</p> <p>18 A. The videos can be turned off by either memory 19 running out or me physically turning it off.</p> <p>20 Q. Okay. How about the audio? Can the audio be 21 turned off separately?</p> <p>22 A. The inner -- the inner audio will run as the 23 video's -- the camera's running. The external mic will 24 run and can be turned off manually as well from a 25 control box that we carry.</p>
<p>139</p> <p>1 pictures, but he's viewing it, so it seems like we 2 should also attach it.</p> <p>3 MR. FOMBY: Well, we could do that. It's 4 a demonstrative at this point because I want to focus in 5 on this. I just wanted him to get the overview as 6 demonstrative to get his -- and we're not going to focus 7 in -- really on the video.</p> <p>8 MS. BAKER: You know, I've done several 9 cases like this, and normally we go ahead and attach the 10 video because the witness is looking at it.</p> <p>11 MR. FOMBY: Okay. Well, I don't have a 12 physical copy of the video at the moment.</p> <p>13 MS. BAKER: If we get you a physical 14 copy, can we attach it?</p> <p>15 THE REPORTER: Sure. If it's agreeable.</p> <p>16 MS. BAKER: Okay.</p> <p>17 MR. FOMBY: Okay. And why don't we call 18 that physical copy, I can send that to you by --</p> <p>19 THE REPORTER: E-mail.</p> <p>20 MR. FOMBY: E-mail. And we'll call it 21 Exhibit 36.</p> <p>22 MS. BAKER: Perfect. Thank you. 23 (Exhibit No. 36 marked.)</p> <p>24 Q. (BY MR. FOMBY) So at the moment --</p> <p>25 A. I can't see that. There's too much glare.</p>	<p>141</p> <p>1 Q. Okay. And does everyone -- do the other 2 deputies and police officers have a control box that 3 could turn this particular mic off?</p> <p>4 A. No.</p> <p>5 Q. It's just you?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. As I said, I'm going to run this up 8 until the point after the car stops because -- and then 9 we can go back and take a look at some -- at some 10 moments in time.</p> <p>11 (Video playing.)</p> <p>12 (Video stops.)</p> <p>13 Q. (BY MR. FOMBY) And that would be Ashtian's 14 car, correct?</p> <p>15 A. That's correct.</p> <p>16 MR. FOMBY: Is the audio on? There it 17 is.</p> <p>18 (Video playing.)</p> <p>19 (Video stops.)</p> <p>20 Q. (BY MR. FOMBY) Okay. And that's the same 21 video that you watched before, right?</p> <p>22 A. That's correct.</p> <p>23 Q. And there's more that goes on here with 24 officers showing up. I think at some point 26 officers, 25 police officers or constables or deputy constables were</p>

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<p style="text-align: right;">142</p> <p>1 on the scene, but...</p> <p>2 MS. BAKER: Object to sidebar.</p> <p>3 Q. (BY MR. FOMBY) So we're not going to go all</p> <p>4 the way into that, but I -- I just want to come back</p> <p>5 here and look again at what was going on in those few</p> <p>6 seconds, okay?</p> <p>7 Okay. So now we're at the 150 mark into the</p> <p>8 video, and I think everything starts happening at 2:57,</p> <p>9 but --</p> <p>10 (Video playing.)</p> <p>11 (Video stops.)</p> <p>12 Q. (BY MR. FOMBY) Okay. At this point I</p> <p>13 don't -- what he's -- what you guys are talking about is</p> <p>14 he tells you it's a rental car and you asked who rented</p> <p>15 the car, when did you rent it, he says about a week ago,</p> <p>16 right, and it's in his girlfriend's name, so you're</p> <p>17 having that conversation.</p> <p>18 A. (Nods affirmatively.)</p> <p>19 MS. BAKER: Object to sidebar.</p> <p>20 (Video playing.)</p> <p>21 (Video stops.)</p> <p>22 Q. (BY MR. FOMBY) Okay. I wanted to know, at</p> <p>23 this point, up until this point, the blinker has been</p> <p>24 going. You notice that?</p> <p>25 A. Okay.</p>	<p style="text-align: right;">144</p> <p>1 MS. BAKER: As long as you ask a question</p> <p>2 he understands. We don't even need to be oriented</p> <p>3 because he was there.</p> <p>4 MR. FOMBY: Actually I think he will need</p> <p>5 to be oriented and we will get to that very quickly</p> <p>6 here.</p> <p>7 (Video playing.)</p> <p>8 (Video stops.)</p> <p>9 Q. (BY MR. FOMBY) Okay. So at this point the</p> <p>10 trunk has been popped, right?</p> <p>11 A. That's correct.</p> <p>12 Q. And it's opened up and we notice the distance</p> <p>13 between the cars, so the cars are still the same</p> <p>14 distance apart, they haven't moved, correct?</p> <p>15 A. Correct.</p> <p>16 (Video playing.)</p> <p>17 (Video stops.)</p> <p>18 Q. (BY MR. FOMBY) Okay. Now something has</p> <p>19 happened. We see the blinkers, see -- did you notice</p> <p>20 the blinkers came back on?</p> <p>21 A. Uh-huh (Affirmative.)</p> <p>22 Q. Okay. Something going's on in the car that's</p> <p>23 changed, and you have moved toward the car; is that</p> <p>24 correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">143</p> <p>1 MS. BAKER: I guess there's a question?</p> <p>2 MR. FOMBY: Yes. That's the question.</p> <p>3 Q. (BY MR. FOMBY) Did you notice the blinker has</p> <p>4 been moving?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So I don't drive that car but something</p> <p>7 just changed and the blinker is no longer blinking at</p> <p>8 this particular moment, correct?</p> <p>9 A. Right.</p> <p>10 Q. And this is at approximately the time that you</p> <p>11 said that you saw him turn the car off and put the key</p> <p>12 down, approximately the time?</p> <p>13 A. Yeah.</p> <p>14 Q. And all this happens in a few seconds. I'm</p> <p>15 just trying to get us into the context of what's</p> <p>16 happening.</p> <p>17 MS. BAKER: I -- I'm not trying to tell</p> <p>18 you how to take a deposition, truly not. You're</p> <p>19 obviously very talented, but we generally proceed by</p> <p>20 question and answer, so I think he needs --</p> <p>21 MR. FOMBY: I've asked a question. I</p> <p>22 said that this has happened, is that your perception.</p> <p>23 MS. BAKER: Okay.</p> <p>24 MR. FOMBY: I'm asking him a question</p> <p>25 whether he agrees with me.</p>	<p style="text-align: right;">145</p> <p>1 Q. Okay.</p> <p>2 (Video playing.)</p> <p>3 (Video stops.)</p> <p>4 Q. (BY MR. FOMBY) Okay. What were -- what was</p> <p>5 it you said at that particular point?</p> <p>6 MS. BAKER: Objection, vague.</p> <p>7 Q. (BY MR. FOMBY) Do you want me to play it</p> <p>8 again for you?</p> <p>9 (Video playing.)</p> <p>10 (Video stops.)</p> <p>11 Q. (BY MR. FOMBY) Okay. Did you hear it that</p> <p>12 time?</p> <p>13 A. I heard it.</p> <p>14 Q. Okay. So it wasn't, you know, stop or I'll</p> <p>15 shoot, right?</p> <p>16 A. Right.</p> <p>17 Q. It wasn't stop, right?</p> <p>18 A. Right.</p> <p>19 Q. It was "don't fucking move, don't fucking</p> <p>20 move"; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And then you fired your weapon?</p> <p>23 A. Correct.</p> <p>24 Q. And then almost immediately afterwards you</p> <p>25 fired it again; is that fair?</p>

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<p style="text-align: right;">146</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And then the car stopped. And as we 3 can see, and I have a photograph of that, that will show 4 it, the light -- brake light remains on which means 5 Ashtian's foot would be on the brake, correct?</p> <p>6 A. Correct.</p> <p>7 Q. You did not at this point make a move to get 8 inside the car to put it out of gear, did you?</p> <p>9 A. No, I did not.</p> <p>10 Q. Do you know where -- whether the car was 11 placed in park before the other officers arrived?</p> <p>12 A. When I instructed him to do so.</p> <p>13 Q. Okay. So the car at this point and until the 14 next officers arrive, is in gear but Ashtian's holding 15 down the brake pedal?</p> <p>16 A. When I instructed him to put the car in park 17 he put the car in park.</p> <p>18 Q. Who was that, Ashtian?</p> <p>19 A. Ashtian.</p> <p>20 Q. So after he was shot and he was lying there, 21 you said put it in park and Ashtian put it in park?</p> <p>22 A. Well, he wasn't -- I mean he was sitting there 23 and he was still conscious and able to -- to move and do 24 everything else and when I said put the car in park, 25 that's when he put the car in park.</p>	<p style="text-align: right;">148</p> <p>1 Q. (BY MR. FOMBY) Now Deputy, let's go through 2 this, I was able to use Microsoft's standard program to 3 run the video and have it take the little snapshots of 4 every frame, okay? And we just saw the video and we can 5 go back to it if we need to, but before we get into 6 this, I wanted to ask again, I don't know if it got it 7 on the audio from me because I was standing over there, 8 that these statements that you made to Ashtian Barnes 9 was not don't do it or fucking stop, but in fact, was 10 don't fucking move, you repeated twice.</p> <p>11 MS. BAKER: Objection, asked and answered 12 several times.</p> <p>13 MR. FOMBY: Actually he never said that 14 except when I was up here and I wanted to make sure that 15 it's on the record because I don't have the -- the mic 16 on me.</p> <p>17 Q. (BY MR. FOMBY) But is that an accurate 18 statement?</p> <p>19 A. That would be.</p> <p>20 Q. Okay. Now I have these -- these stills that 21 are marked Exhibit 1 through 29. I'm going to walk 22 through them slowly. I have a copy. They're all 23 identical. And these we just saw, the first two of 24 these are actually just the moment when you pulled in 25 behind him at 14:43:32.</p>
<p style="text-align: right;">147</p> <p>1 Q. So Ashtian at that point was conscious of 2 the -- of the fact that he needed to make the situation 3 safe?</p> <p>4 A. He was -- he was --</p> <p>5 Q. Put the car in park?</p> <p>6 MS. BAKER: Objection, calls for 7 speculation.</p> <p>8 A. He was doing what he was instructed to -- or 9 ordered to do.</p> <p>10 (Video playing.)</p> <p>11 (Video stops.)</p> <p>12 Q. (BY MR. FOMBY) It's not easy to hear on this 13 computer as -- the sound of Ashtian, but our recording 14 showed him talking to you at that point. Do you 15 remember him ever talking to you?</p> <p>16 A. He mumbled something or said something.</p> <p>17 Q. Okay.</p> <p>18 A. I was concerned about getting him medical 19 attention. That's, you know, me talking over the radio.</p> <p>20 MR. FOMBY: And we will get you this 21 video.</p> <p>22 THE REPORTER: Yes.</p> <p>23 MR. FOMBY: Actually, we can probably --</p> <p>24 we can give to you right now, but okay.</p> <p>25 THE VIDEOGRAPHER: Don't forget your mic.</p>	<p style="text-align: right;">149</p> <p>1 The second one is the moment where he finally 2 stopped, and that would be doing the math, some 14 3 seconds later, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Now, I'm going to jump forward to 14:45:47, 6 which is approximately two minutes. And we saw that you 7 had stepped up and you were asking him some questions, 8 and going back and forth and we saw you telling him not 9 to shuffle around. By this point, you had opened the 10 door. And the blinker was on on his car; is that 11 correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Also at this point you're standing away from 14 the car, it's very hard to tell the distance but your 15 body is -- the door is open almost fully and your body 16 is halfway or more than halfway toward the outside of 17 the car door; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. This one is only important because I 20 wanted you to notice that the blinker is blinking. So 21 you see the change, the blinker -- you can see the cars 22 going on the other side of the road to notice the time 23 is changing, but we're talking about seconds and 24 fractions of seconds, correct?</p> <p>25 MS. BAKER: Mr. Fomby, I understood you</p>

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<p style="text-align: right;">150</p> <p>1 to say the blinker is blinking on the one 14:45:47 but 2 it looks like it's off to me. Did you mean to say off? 3 MR. FOMBY: It is blinking because the -- 4 it's going on off on off which is blinking. It's not 5 on, it is blinking.</p> <p>6 MS. BAKER: So you're asking the witness 7 to assume that the -- I mean it's not evident to me that 8 it's blinking. So you're asking the witness to assume 9 that?</p> <p>10 MR. FOMBY: I think that we can look at 11 this and see that within a fraction of a second the 12 light comes on and off and on and off only on the 13 driver's side rear turn indicator.</p> <p>14 MS. BAKER: Okay. So I'm going to object 15 to that as assuming facts not in evidence. Please 16 continue.</p> <p>17 Q. (BY MR. FOMBY) And again, at this point I'm 18 putting a little bit more out than necessary, but I just 19 want to show that these fractions of a moment as these 20 cars are coming by, okay?</p> <p>21 You are still standing there talking to him in 22 the same position you were in before; is that correct?</p> <p>23 MS. BAKER: You're referring to Exhibit 6 24 for clarity of the record?</p> <p>25 MR. FOMBY: On Exhibit 6.</p>	<p style="text-align: right;">152</p> <p>1 left leg; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And your body has moved from the outer portion 4 of the driver's side door more to the inner portion of 5 that door, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. This is exhibit -- Exhibit 9. Now, at 8 Exhibit 9, the brake lights are off, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And that means that if the car is in gear, at 11 this point there's nothing stopping the car from moving 12 forward, correct? So we do notice that the blinker's 13 still on and the trunk, position of the trunk lid has 14 not changed. Do you see that?</p> <p>15 A. Okay.</p> <p>16 Q. Okay. Your body, meanwhile, your -- we can't 17 see your left foot. We can -- your right foot is 18 disappearing in the direction of the car, and your body 19 is moving further in to the interior of the car. You 20 can see more of the driver's side door, right? There's 21 exhibit --</p> <p>22 MS. BAKER: Do you agree with that?</p> <p>23 A. I -- it's about the same. I mean just my -- 24 I'm turning towards the car.</p> <p>25 Q. (BY MR. FOMBY) Okay.</p>
<p style="text-align: right;">151</p> <p>1 A. That's correct.</p> <p>2 Q. (BY MR. FOMBY) Okay. And between Exhibit 5 3 and Exhibit 6, the relative positions of cars have not 4 changed; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. We have Exhibit 7. And Exhibit 7, and I want 7 you to compare that to Exhibit 6. The brake lights have 8 come on on the car, and your foot position has changed 9 from Exhibit 6, has it not?</p> <p>10 A. Yes, or my stance from what I can see.</p> <p>11 Q. So your right foot appears to be in the same 12 position, but your left foot has changed, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And when we look at your elbow position for 15 your right arm, your right arm elbow appears to be 16 coming up and your hand is reaching down in the 17 direction of your service revolver; is that accurate?</p> <p>18 A. My service weapon, yes.</p> <p>19 Q. Yeah. This is Exhibit 8. At this point, your 20 service revolver, service weapon is pulled, the car is 21 still -- the brake lights are still on, the car has not 22 moved, your -- now your right foot has changed position; 23 is that correct?</p> <p>24 A. It's come off, yeah.</p> <p>25 Q. And we can no longer see your left foot and</p>	<p style="text-align: right;">153</p> <p>1 MS. BAKER: Because he's trying to ask 2 you a question but they don't always come out questions.</p> <p>3 THE WITNESS: Okay.</p> <p>4 MS. BAKER: So we -- we're looking for a 5 question.</p> <p>6 Q. (BY MR. FOMBY) So here is Exhibit 10. And at 7 this point, looking down, the -- your right foot now has 8 completely disappeared from the picture. The blinker 9 has blinked off, so it appears to still be blinking, but 10 it's now in the off position. There doesn't seem to be 11 any real difference in separation between the vehicles, 12 but at this point the trunk lid is starting to come up. 13 And from what you understand of that sort of mechanics, 14 as a car starts to lurch forward, that would possibly 15 cause the trunk lid to rise, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. So in this picture, Exhibit 10, we 18 can't see your feet on the ground. Where are your feet?</p> <p>19 A. I can't see my feet either, so I mean from 20 this picture, I can't tell you for sure.</p> <p>21 Q. Okay. Looking back at picture 9 and picture 22 10, look at the -- at Ashtian's head, which is this dark 23 blob on -- in this rough center of the -- of the car 24 back window. Do you see the change in head position 25 relative to the rearview mirror?</p>

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<p>1 A. Okay.</p> <p>2 Q. It appears that Ashtian is pulling his head</p> <p>3 off toward the right side of the car. Is that what it</p> <p>4 looks like to you?</p> <p>5 A. He's moving his body.</p> <p>6 Q. Yeah. This is Exhibit 11. Now, again, we</p> <p>7 can't see your feet. The blinker has blinked back on.</p> <p>8 The trunk lid is starting to rise, and for the first</p> <p>9 time if you look carefully at the difference between the</p> <p>10 front of the squad car and the wheels, for instance, of</p> <p>11 Ashtian's car, the car has apparently moved a foot or</p> <p>12 so. Hard to tell the actual distance?</p> <p>13 MS. BAKER: You know I'm going to object</p> <p>14 to that because it's calling for speculation and I'm --</p> <p>15 I'm going to ask you again, are you asking him to assume</p> <p>16 that, are you representing that to him? Have you done</p> <p>17 some sort of study that would permit you to represent</p> <p>18 that to him?</p> <p>19 MR. FOMBY: Represent what specifically?</p> <p>20 MS. BAKER: The -- the distance change.</p> <p>21 MR. FOMBY: I said that it's hard -- I</p> <p>22 actually said it's hard to determine, but it appears to</p> <p>23 have moved slightly at this particular point.</p> <p>24 MS. BAKER: And you're asking him if that</p> <p>25 is his opinion?</p>	<p>154</p> <p>1 Q. Shadow of some sort, some object or whatever</p> <p>2 in that particular point.</p> <p>3 A. Okay.</p> <p>4 Q. Okay. At this point, which direction are you</p> <p>5 facing?</p> <p>6 A. That direction is west.</p> <p>7 Q. Okay. This is Exhibit 11. Going back to 9</p> <p>8 and 10, looking at them in sequence, at 9 the door has</p> <p>9 not moved, or it's not visibly moved, and 10, the</p> <p>10 driver's side door has not visibly moved, but by 11, the</p> <p>11 door appears to be pulling closed. Is that accurate?</p> <p>12 A. Closing on me, yes.</p> <p>13 Q. And then we get to 12. And at this point, we</p> <p>14 actually start seeing some significant separation</p> <p>15 between the vehicles. The blinkers are still on, and</p> <p>16 the door has now kind of swung closed a little bit,</p> <p>17 correct?</p> <p>18 A. In -- in --</p> <p>19 THE REPORTER: I'm sorry?</p> <p>20 A. Yes, in the -- in the car doorsill.</p> <p>21 Q. (BY MR. FOMBY) Okay. And you're standing at</p> <p>22 this point on the sill of the car?</p> <p>23 A. I believe so.</p> <p>24 Q. And I'm sorry that these are duplicates -- oh,</p> <p>25 I mean not duplicates but they're short timeframes, but</p>
<p>155</p> <p>1 MR. FOMBY: And I'm asking him as the</p> <p>2 person who has taken classes in accident reconstruction</p> <p>3 and traffic reconstruction and all that, whether or not</p> <p>4 that distance from that position would be consistent</p> <p>5 with a foot or two.</p> <p>6 MS. BAKER: So in that context, if you</p> <p>7 can answer.</p> <p>8 THE WITNESS: Okay.</p> <p>9 A. It's moved some.</p> <p>10 Q. (BY MR. FOMBY) Okay. Now, in this picture,</p> <p>11 we can no longer see Ashtian's head, can we?</p> <p>12 MS. BAKER: We're talking Exhibit 11?</p> <p>13 MR. FOMBY: Exhibit 11.</p> <p>14 Q. (BY MR. FOMBY) But we see some kind of dark</p> <p>15 straight object just before the lid of the trunk. Do</p> <p>16 you see that, Officer -- Deputy?</p> <p>17 MS. BAKER: He's referring to 11 I think.</p> <p>18 THE WITNESS: Yeah, this is 11.</p> <p>19 A. You said dark object?</p> <p>20 Q. (BY MR. FOMBY) Right in the very -- right</p> <p>21 underneath the large light pole.</p> <p>22 A. Okay.</p> <p>23 Q. And just to the left of the rearview mirror</p> <p>24 there is a straight dark object showing in the picture.</p> <p>25 A. Like a shadow?</p>	<p>157</p> <p>1 I just wanted to be fair to not, as you said, leap ahead</p> <p>2 too fast because seconds are important.</p> <p>3 This is Exhibit 13. And again, there's an</p> <p>4 increasing separation between the cars. The blinker is</p> <p>5 off. And I'm going to stop talking about the blinker</p> <p>6 because it blinks on and off, on and off all the way</p> <p>7 through here. Okay?</p> <p>8 MS. BAKER: 13 is a dup of 12, is it not?</p> <p>9 It's 14:45:50.</p> <p>10 MR. FOMBY: They are fractions of a</p> <p>11 second apart.</p> <p>12 MR. ADAM FOMBY: Yeah, so you can't</p> <p>13 always tell based on the seconds if they're the same.</p> <p>14 Q. (BY MR. FOMBY) I think the key to looking at</p> <p>15 the two of these, it to look at the relative positions</p> <p>16 of. This pickup truck which from this point moves to</p> <p>17 this position, this pickup truck, which has moved to</p> <p>18 this position, this car, which has moved to this</p> <p>19 position. So looking at the vehicle positions gives us</p> <p>20 a sense of what happened in what order.</p> <p>21 MS. BAKER: I'm going to -- I -- I'm</p> <p>22 assuming that was intended to be helpful. Anyway,</p> <p>23 please continue.</p> <p>24 Q. (BY MR. FOMBY) Since all this happened in --</p> <p>25 in literally mere seconds, I'm trying to carve this down</p>

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<p>1 into the tiniest pieces. Okay. We're looking at 14 2 now.</p> <p>3 MR. FOMBY: Did I hand out 14 to you yet?</p> <p>4 MS. BAKER: Yes.</p> <p>5 MR. FOMBY: Okay.</p> <p>6 Q. (BY MR. FOMBY) And then 15. At 14, you -- it 7 appears that your arm is inside the -- your right arm is 8 inside the vehicle, or at least partially, right?</p> <p>9 A. Correct.</p> <p>10 Q. By 15 it appears --</p> <p>11 MS. BAKER: You can --</p> <p>12 THE WITNESS: Yes.</p> <p>13 Q. (BY MR. FOMBY) -- that's changing. By 16 we 14 see that your arm has come completely out of the 15 vehicle?</p> <p>16 A. That's correct.</p> <p>17 Q. Again, we're now -- you know, we were looking 18 at 50, we've gone through 1, 2, 3 shots and it's still 19 51 seconds. So these are portions of a second.</p> <p>20 This is 17. And it appears at this point that 21 your arm is moving forward?</p> <p>22 A. Correct.</p> <p>23 Q. And by 18, your arm is now back into the car?</p> <p>24 A. That's correct.</p> <p>25 Q. So it is impossible at this point because we</p>	<p>158</p> <p>1 MS. BAKER: And when you say this one, 2 are you talking about Exhibit 22?</p> <p>3 MR. FOMBY: Exhibit 22.</p> <p>4 MS. BAKER: Okay. We just need to have 5 the record clear.</p> <p>6 A. Well, from the picture that you provided, 7 Exhibit 20, you said that that was where the -- at that 8 point the second shot was -- was made and then the next 9 picture -- picture is about eight seconds later when the 10 vehicle is stopped. And then 28 seconds after that is 11 Exhibit 22 -- or actually, I'm sorry, a minute and 28 12 seconds later is when I'm waiting for -- for my backup.</p> <p>13 Q. (BY MR. FOMBY) Right. And I -- I skipped 14 forward to there because I had intermediate shots of you 15 slowly getting out of the car which is unimportant. The 16 point that I was trying to demonstrate is the timeframe, 17 and you can see where the car wound up and where you are 18 at 14:45:52, and Ashtian, the car moved only slightly 19 before Ashtian brought it to a halt. So somewhere in 20 there around the 52 or 53 mark is when the second shot 21 was fired?</p> <p>22 MS. BAKER: So do you -- can you answer 23 that? I believe that's a question.</p> <p>24 A. I -- not -- well, not from just looking at the 25 picture.</p>
<p>159</p> <p>1 don't have sound attached to these to know at what point 2 you fired, but you did -- we do know that you did not 3 fire your weapon until your arm was back in the car; is 4 that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Okay. Here's 19. And somewhere in 7 this timeframe, because we'll get to 20, the second shot 8 was fired?</p> <p>9 MS. BAKER: I assume that was a question?</p> <p>10 Q. (BY MR. FOMBY) Because we get to the next 11 slide, and we are -- when you see a little further down 12 the road, 21, that the car by this time has come to a 13 stop. So the time from Exhibit 8 where the brake lights 14 are on and you are moving into the vehicle until the 15 time of the first shot is roughly two seconds or so, and 16 then roughly one second or less for the second shot, and 17 then we have you in position by Exhibit 22 holding a gun 18 on Ashtian inside the car.</p> <p>19 MS. BAKER: And again, are you asking him 20 if he agrees with this or are you representing to him?</p> <p>21 MR. FOMBY: Yes, I'm asking if he agrees 22 with it.</p> <p>23 Q. (BY MR. FOMBY) But -- and you note that 24 the -- in this one the brake light is on; is that 25 correct?</p>	<p>161</p> <p>1 MS. BAKER: Okay.</p> <p>2 Q. (BY MR. FOMBY) Okay. As I said, this doesn't 3 have sound attached to it, but I'm just saying these -- 4 these -- this is the timeframe we're talking about, 5 so --</p> <p>6 MS. BAKER: To be honest with you, 7 Mr. Fomby, this sounds more like jury argument or 8 questions to be directed to an expert. I think it's 9 difficult for the deputy to be able to agree or disagree 10 with you.</p> <p>11 MR. FOMBY: And he has -- he can say that 12 he can't tell from this.</p> <p>13 MS. BAKER: Well, it's --</p> <p>14 MR. FOMBY: That's -- and that's all 15 right.</p> <p>16 MS. BAKER: It's also very difficult 17 because you don't appear to be asking -- you appear to 18 be explaining and demonstrating, which is well and good, 19 but here we're for a deposition, so, you know, we're not 20 in a jury trial right now at this moment so we need to 21 have a question and answer. Now I've asked him some of 22 what I perceive to be your questions. So if they're not 23 right, you're the one that needs to cover it.</p> <p>24 Q. (BY MR. FOMBY) So in between -- and we can go 25 back and pull up the video and show you where the shots</p>

<p style="text-align: right;">162</p> <p>1 fired. Would you like to do that? Let's do that. 2 Again, we're talking fractions of a second. So what I 3 will need to do here is spend more time listening and 4 watching the time, okay? 5 (Video playing.) 6 (Video stops.) 7 Q. (BY MR. FOMBY) So in there between 51, we'll 8 go back and watch that again. 9 (Video playing.) 10 (Video stops.) 11 Q. (BY MR. FOMBY) So in there between 51, we'll 12 go back and watch that again. Bang, bang. Do you need 13 to watch that again just to catch when that -- 14 (Video playing.) 15 (Video stops.) 16 A. I believe it was 52 and 53. 17 Q. (BY MR. FOMBY) Okay. And as I said, and -- 18 and correct me if I was wrong -- I told you that it's 19 very difficult to know exactly by looking at the videos 20 here, but somewhere around 52 and 53 is what you heard? 21 A. Correct. 22 Q. Okay. So looking back at the videos, at 49 is 23 when the car -- the trunk of the car starts rising and 24 the door starts closing and that's -- and at somewhere 25 around 52, three seconds or so later is when the first</p>	<p style="text-align: right;">164</p> <p>1 A. No. 2 Q. Okay. Now we can play the video, but 26 is 3 now another minute 20 -- minute and 10 seconds, and 4 still Ashtian is not receiving any kind of CPR at this 5 point, correct? You -- you could look at the -- 6 A. I mean there -- yeah, there's no one there but 7 I'm not aware of his medical state at that time, whether 8 he was still breathing or not. So, I mean, CPR wouldn't 9 have been appropriate at that time. 10 Q. Right, but you -- by -- at this point he still 11 had not been removed from -- from his car, correct? 12 A. That's correct. Waiting for Houston Fire 13 Department and ambulance to make the scene to provide 14 adequate medical attention. 15 Q. Okay. And 27, this is some slightly less than 16 six, five and a half minutes later or thereabouts is, at 17 this point you see CPR being performed and the EMR -- 18 EMS techs showing up on the scene; is that correct? 19 A. Yeah, I believe CPR was -- 20 Q. Okay. 21 A. -- started prior to that time. 22 Q. And to your point, to be fair, their records 23 show that by the time they arrived, Ashtian had been 24 declared DOA. So -- 25 A. Who -- who -- I'm sorry?</p>
<p style="text-align: right;">163</p> <p>1 shot was fired. Is that what you saw? 2 A. 49 to 52. 3 Q. Yes. 4 A. Yeah, about three seconds. 5 Q. And then another second and then the second 6 shot was fired? 7 A. Correct. 8 Q. Here is Exhibit 23. And this is at 47:31, 9 which is about a minute and a half after the car -- a 10 minute and a half after the car came to a stop is when 11 the first police officer, your first colleague shows up 12 on the scene; is that correct? 13 A. Yes. 14 Q. And then in Exhibit 24, somewhere around 12 15 seconds later, someone else shows up. And by 16 Exhibit 25, this would be another 45 seconds. 17 A. 24 actually shows the fourth deputy arriving, 18 not the third. 19 Q. Okay. So by the next exhibit, 25, we have 20 quite a number of deputies on the scene. 21 MS. BAKER: Object to relevance. 22 Q. (BY MR. FOMBY) So what I want you to look -- 23 check and look down at the driver's side door, look down 24 on the ground there. Do you see Ashtian's body laid out 25 and CPR being performed at that point?</p>	<p style="text-align: right;">165</p> <p>1 Q. EMS records show that he had been declared DOA 2 which is -- 3 MS. BAKER: So the Constable's Office 4 doesn't make declarations like that. Are you telling 5 him that someone at EMS -- 6 Q. (BY MR. FOMBY) Someone -- someone at the 7 scene before EMS showed up declared him DOA? 8 A. No. 9 Q. They said he's not responsive, not breathing, 10 no pulse? 11 A. The only person that can declare is -- is a 12 medical attendant. 13 MS. BAKER: Yeah. 14 A. HFD is the only one that can do that, so... We 15 can give a status of his -- what we perceive to be his 16 medical condition but we can't declare someone -- 17 Q. Right. 18 A. -- DOA. 19 Q. And in fact, the only people who can really 20 declare him DOA are actual doctors or justice of the 21 peace? 22 MS. BAKER: I'm going to object to that 23 as misstating the statutory authorities. 24 Q. (BY MR. FOMBY) So Deputy, going back to -- 25 MS. BAKER: Oh, yes, if you're at a</p>

<p>1 stopping point, could we take a quick restroom break, 2 bathroom break?</p> <p>3 MR. FOMBY: No problem.</p> <p>4 THE WITNESS: Restroom break.</p> <p>5 MR. FOMBY: No problem.</p> <p>6 THE VIDEOGRAPHER: The time is 7 approximately 2:56 p.m., we're off the record.</p> <p>8 (Off the record.)</p> <p>9 THE VIDEOGRAPHER: The time is 10 approximately 3:01 p.m., we're on the record.</p> <p>11 Q. (BY MR. FOMBY) Deputy, I want to go back and 12 revisit these exhibits, particularly Exhibits 7 through 13 12. These particular exhibits are screenshots of the 14 moment when the car -- Ashtian stepped on the brakes of 15 the car, the car is on and everything starts to happen.</p> <p>16 In your statement that you gave you said that 17 he turned on the vehicle and you still have your 18 statement, you said that I drew my weapon, told him 19 something like don't do it as he started to put the car 20 in drive.</p> <p>21 MR. ADAM FOMBY: Wait for a second so he 22 can --</p> <p>23 MR. FOMBY: Yeah.</p> <p>24 A. (Witness examines document.)</p> <p>25 Q. (BY MR. FOMBY) Then you say that: At that</p>	<p>166</p> <p>1 your head appears to rise above the roof line, and your 2 shoulders appear to rise above the door line. At the 3 same time your feet go from a standing position in 4 Exhibit 7, to a position that's moved very rapidly in a 5 fraction of a second in the direction of the car.</p> <p>6 Are you still comfortable with your statement 7 that the vehicle was speeding away as -- oh, and the 8 door by 7, 8, 9 and 10 is still wide open, has not 9 changed, slowly starting to close at 11 and only starts 10 to close at 12. Are you still comfortable with your 11 statement under oath that it was only when the vehicle 12 was speeding away and you felt the driver door closing 13 on you that you jumped on the door sills and held on so 14 you wouldn't get run over?</p> <p>15 MS. BAKER: I'm going to object to that 16 question as extremely argumentative. Also as 17 multifarious and to the extent there is a question in 18 that line of dialogue or monologue, actually, do you 19 agree with Mr. Fomby's assessment?</p> <p>20 A. At the time of the -- of my statement, that 21 was the best recollection of the incident without having 22 looked at the -- at the video.</p> <p>23 Q. (BY MR. FOMBY) Now I can understand that, 24 Deputy, but when you made your oath, at any point in 25 your statements did you state that you are uncertain of</p>
<p>167</p> <p>1 point, my body was partially in the vehicle as he 2 accelerated away. As the vehicle sped away I felt the 3 driver door closing on me, started to feel I was being 4 pinned and going to be drug. I quickly jumped onto the 5 doorsill and held on so I wouldn't get run over.</p> <p>6 But in these pictures we see you stepping onto 7 the car with the brake on and the car not moving. So 8 the car is not speeding away and accelerating away when 9 you jumped on the car, the door is still wide open and 10 your feet are off the ground?</p> <p>11 MS. BAKER: I believe that is a question, 12 and I believe he's asking you if you agree with that.</p> <p>13 A. I can't agree from the picture. I mean I know 14 my feet are closer to the vehicle, but I'm not sure from 15 the picture if my feet were actually on the doorsill at 16 that time.</p> <p>17 MS. BAKER: And when you say that, 18 Deputy, just for clarity of the record, what particular 19 photograph are you looking at?</p> <p>20 THE WITNESS: I'm looking at Exhibit 10, 21 10 and 11, I believe.</p> <p>22 Q. (BY MR. FOMBY) I want you to look at 23 Exhibit 8, 9, 10 and 11 and 12. And look at your head 24 position. As you go through the sequence of those 25 exhibits, your head and shoulders actually appear --</p>	<p>169</p> <p>1 the details but you thought that might have been what 2 happened?</p> <p>3 A. I don't believe that's in the statement. It's 4 the --</p> <p>5 Q. And so when we look at photograph Exhibit 10, 6 and the car is still relatively -- positioned relatively 7 the same position to your squad car, the doors open, 8 your feet are nowhere to be seen, your head is now above 9 the roof line. Are you stating that at that point you 10 are not standing on top of the doorsill?</p> <p>11 A. Well, from Exhibit 9 and 10, my head is 12 relatively positioned in the same manner, just my feet 13 are either out of the camera view. In Exhibit 11, at 14 that point I can say that my head is elevated prior to 15 Exhibit 9 and 10.</p> <p>16 Q. So you would say that by 11, your feet are 17 firmly positioned on the sill of the door?</p> <p>18 A. I can say that at least one of them might have 19 been in order for me to be elevated slightly.</p> <p>20 Q. So in fact, this happened as the car was 21 beginning to move and not as it sped away?</p> <p>22 A. From -- from the video, watching the video and 23 looking at the picture, as the vehicle was moving is 24 when -- at one point in one and at I guess by Exhibit 12 25 both feet were on at that time.</p>

<p>1 Q. Deputy, did you place both of your feet on the 2 doorsill after the car started moving or before it 3 started moving?</p> <p>4 A. I would say as it was moving, as it started to 5 move.</p> <p>6 Q. Okay. Now, in your statement you make a 7 statement and on the video you make a statement that 8 the -- that you detected a strong odor of marijuana 9 coming from Ashtian Barnes' vehicle; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Isn't, in fact, Deputy, that merely a 12 pretextual statement to allow you to illegally search 13 his vehicle?</p> <p>14 MS. BAKER: Objection, very 15 argumentative, assumes facts totally not in evidence.</p> <p>16 A. That's incorrect.</p> <p>17 Q. (BY MR. FOMBY) You realize, Deputy, that no 18 other -- of the 26 other officers on the scene, not a 19 single one put in a statement that he detected the odor 20 of marijuana on -- in the vehicle?</p> <p>21 MS. BAKER: Objection, assumes facts not 22 in evidence.</p> <p>23 A. I've never seen any statements or heard any 24 other statements from any other person.</p> <p>25 Q. (BY MR. FOMBY) Are you aware that when the</p>	<p>170</p> <p>1 Q. So Deputy, in your experience as a peace 2 officer, what is -- what is a necessary condition -- or 3 you say you smelled marijuana. How can you spell -- 4 smell marijuana that is not in the vehicle?</p> <p>5 A. It can be many reasons. It can be, you know, 6 residue from previous use, it could be, you know, 7 lingering odor, it was in the vehicle at one time or -- 8 or early in the day. When I stopped the vehicle, he 9 could have thrown it out. But there was an odor of 10 marijuana in the vehicle.</p> <p>11 Q. Did you detect anything being thrown from the 12 driver's side of the vehicle while -- during the stop?</p> <p>13 A. Not that it was significant motion that -- 14 that he had done.</p> <p>15 Q. I want to go back to the beginning of this. 16 Well, I'm going to start with the end of it. The end of 17 this, there was -- there were no drugs found in his car?</p> <p>18 MS. BAKER: Are you asking him to assume 19 that?</p> <p>20 MR. FOMBY: And I'm setting a predicate.</p> <p>21 Q. (BY MR. FOMBY) At the end of this, there -- 22 the toll tag violation, even if it was a serious crime, 23 was apparently not his fault. And yet at the end of 24 this, Ashtian Barnes was killed. Is there anything 25 looking back on this that you personally would have</p>
<p>171</p> <p>1 car was searched, no marijuana of any sort was found in 2 the car?</p> <p>3 A. I'm not sure what was found in the car 4 completely as far as marijuana, but I guess it's my 5 understanding that there wasn't any marijuana found in 6 the vehicle.</p> <p>7 Q. No drugs of any kind were found in the 8 vehicle?</p> <p>9 A. I -- I don't know.</p> <p>10 Q. Okay. When you say you smelled marijuana, was 11 it fresh marijuana, dried marijuana, burnt marijuana or 12 edible marijuana that you smelled?</p> <p>13 A. It was a odor of marijuana coming from the 14 vehicle.</p> <p>15 Q. Is there --</p> <p>16 A. So --</p> <p>17 Q. -- a difference in odor between those four 18 types of apps?</p> <p>19 A. Yeah, there could be, yes.</p> <p>20 Q. And you -- you don't recall what particular -- 21 which -- which particular odor you detected?</p> <p>22 A. It was -- it was an odor of just marijuana 23 coming from the vehicle. I can tell you that it wasn't 24 freshly burnt marijuana, but there was an odor of 25 marijuana coming from the vehicle.</p>	<p>173</p> <p>1 changed, that you personally would have done differently 2 knowing how this all transpired?</p> <p>3 MS. BAKER: I'm going to object to that 4 question as extremely argumentative and more a lecturing 5 argument than an actual question, but that being said, 6 please go ahead and answer.</p> <p>7 THE WITNESS: Okay.</p> <p>8 A. Anything that I could have changed in the 9 entire incident?</p> <p>10 Q. (BY MR. FOMBY) Any -- any one thing or any 11 several things that you believe that you would today 12 have done differently?</p> <p>13 MS. BAKER: That he would have done?</p> <p>14 A. That I would have done?</p> <p>15 Q. (BY MR. FOMBY) Correct.</p> <p>16 A. Okay. No. Everything that was done that day, 17 it would probably be the same situation, rapidly 18 involving events, you know, the threat to myself of 19 serious bodily injury or even death, you know, being, 20 you know, Mr. -- Mr. Barnes was driving away with me 21 holding onto the vehicle. I think everything would have 22 been the exact same way.</p> <p>23 Q. So as a result of this incident you would say 24 that your -- you have learned -- you would -- your 25 behavior and your patterns and your training have not</p>

<p>1 changed?</p> <p>2 MS. BAKER: I'm going to object to that</p> <p>3 question as vague. I'm not clear what is meant by your</p> <p>4 behavior or your patterns. You asked him apparently a</p> <p>5 very specific question and he answered it, but that</p> <p>6 being said, for the record, purposes of the record,</p> <p>7 please go ahead and answer.</p> <p>8 THE WITNESS: Okay.</p> <p>9 A. My sense of awareness is -- I'm looking for --</p> <p>10 for the same things and anything -- any situation like</p> <p>11 that is still handled in the same way. If I feel that,</p> <p>12 you know, there's, you know, a threat to myself or could</p> <p>13 possibly be a threat, then an individual is going to be</p> <p>14 asked to step out and that's going to be handled.</p> <p>15 I can't say I'm going to have the exact same</p> <p>16 situation happen ever again because no traffic stop is</p> <p>17 the same. For -- you know, traffic stops are handled in</p> <p>18 the same manner depending -- or in a manner depending on</p> <p>19 the situation. So I can't, you know, answer for certain</p> <p>20 if, you know, anything else would change the way I'm</p> <p>21 doing it because that's how I'm trained to do it.</p> <p>22 Q. (BY MR. FOMBY) Deputy, the toll roads are</p> <p>23 controlled access roads, are they not?</p> <p>24 A. They're controlled access highways, yes.</p> <p>25 Q. So that means that there are defined entrances</p>	<p>174</p> <p>1 A. And the vehicle and he would have been able to</p> <p>2 just flee, he posed a threat to other motorists as well.</p> <p>3 And my understanding is that they -- they did find a gun</p> <p>4 in that vehicle and potentially could have used that to</p> <p>5 shoot at myself or other officers, you know, while</p> <p>6 trying to pursue and apprehend.</p> <p>7 Q. (BY MR. FOMBY) You don't know where that gun</p> <p>8 came from, do you?</p> <p>9 A. I do not.</p> <p>10 Q. You don't know that that gun had any</p> <p>11 association really to do with that -- Ashtian Barnes, do</p> <p>12 you?</p> <p>13 A. Sir?</p> <p>14 Q. You don't know whether that gun had an</p> <p>15 association with Ashtian Barnes, do you?</p> <p>16 A. I never saw the gun.</p> <p>17 Q. Okay. And at that time you had -- that wasn't</p> <p>18 on your mind, was it?</p> <p>19 A. It's always on our mind when we conduct a</p> <p>20 traffic stop or make contact with an individual that</p> <p>21 they could be armed and potentially hurt my -- myself,</p> <p>22 another deputy or others when their actions are a</p> <p>23 certain way where they're either trying to elude, evade</p> <p>24 or -- or conceal something.</p> <p>25 Q. So did he try to evade you when you turned on</p>
<p>175</p> <p>1 and exits to the toll roads; is that correct?</p> <p>2 A. That is correct.</p> <p>3 Q. And the toll roads have -- are constantly</p> <p>4 being monitored by video cameras; isn't that true?</p> <p>5 A. There is video access to the tollway but not</p> <p>6 constantly monitored.</p> <p>7 Q. An in fact, as we know, there was a video</p> <p>8 monitoring of your traffic stop from the point that you</p> <p>9 started the stop until everything ended; is that</p> <p>10 correct?</p> <p>11 A. It was monitored but not recorded from the --</p> <p>12 from the beginning.</p> <p>13 Q. Okay. And that was by the Toll Road</p> <p>14 Authority?</p> <p>15 A. That is correct.</p> <p>16 Q. So had you decided to stand where you were</p> <p>17 standing and let Ashtian drive off, would there have</p> <p>18 been other mechanisms for apprehending him without</p> <p>19 running the risk of firing a firearm?</p> <p>20 A. We can assume and it could be a yes or no</p> <p>21 because -- except from my understanding, if let's say I</p> <p>22 was in a position where I wasn't caught between the door</p> <p>23 and --</p> <p>24 THE REPORTER: You weren't what?</p> <p>25 THE WITNESS: Caught between the door.</p>	<p>177</p> <p>1 your lights?</p> <p>2 A. No.</p> <p>3 Q. Did he try to evade you when he turned off the</p> <p>4 engine and put his keys down in -- in the -- next to the</p> <p>5 gearshift?</p> <p>6 A. No, but that was one of the indicators to me</p> <p>7 that's not normal for a traffic stop that did raise a</p> <p>8 flag, you know, that he stopped the vehicle.</p> <p>9 Q. Turning off the car and putting the key down</p> <p>10 is a -- is a flag that he is not normal?</p> <p>11 MS. BAKER: I assume that's a question.</p> <p>12 Q. (BY MR. FOMBY) Is that what you're saying?</p> <p>13 MS. BAKER: And it misstates his</p> <p>14 testimony.</p> <p>15 MR. FOMBY: I just asked the question</p> <p>16 now.</p> <p>17 A. Can you repeat the question?</p> <p>18 Q. (BY MR. FOMBY) Turning off the car and</p> <p>19 putting the key down next to the gearshift is a -- to</p> <p>20 you sends a red flag that he was up to something</p> <p>21 possibly nefarious?</p> <p>22 A. With everything that had occurred, there were</p> <p>23 something that wasn't right about that -- that incident,</p> <p>24 yes.</p> <p>25 Q. Okay. You said that you would not change</p>

Roberto Felix

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184

1 I, ROBERTO FELIX, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

6 ROBERTO FELIX
7 THE STATE OF _____)
8 COUNTY OF _____)

10 Before me, _____, on this day
11 personally appeared ROBERTO FELIX, known to me to be the
12 person whose name is subscribed to the foregoing
13 instrument and acknowledged to me that they executed the
14 same for the purposes and consideration therein
15 expressed

16 Given under my hand and seal of office this _____
17 day of _____, 2019.

21 NOTARY PUBLIC IN AND FOR
22 THE STATE OF _____
23 COMMISSION EXPIRES: _____

1 MR. HOWARD FOMBY: 4 hours, 13 minutes
2 MS. MARY E. BAKER: 1 minute
3 That pursuant to information given to the
4 deposition officer at the time said testimony was taken,
5 the following includes counsel for all parties of
6 record:

7 Mr. Howard Fomby and Mr. Adam W. Fomby, Attorneys
8 for Plaintiffs

9 Ms. Mary E. Baker, Attorney for Defendants

10 That \$ _____ is the deposition officer's
11 charges to the Plaintiffs for preparing the original
12 deposition transcript and any copies of exhibits;

13 I further certify that I am neither counsel for,
14 related to, nor employed by any of the parties or
15 attorneys in the action in which this proceeding was
16 taken, and further that I am not financially or
17 otherwise interested in the outcome of the action.

Aubrea Hobbs, TX CSR # 7143
Expiration Date: 1/31/21

183

3 Janice Hughes Barnes, &
Individually and as &
4 Representative of The Estate &
of Ashtian Barnes, Deceased; &
5 and Tommy Duana Barnes, &

and Tommy Duane Barnes &
6 Plaintiffs, &
7 vs. & CAUSE NO: 4:18-CV-00725

8 Roberto Felix, Jr., And the
9 County of Harris, Texas
Defendants. &

10 REPORTER'S CERTIFICATION
11 DEPOSITION OF ROBERTO FELIX
12 FEBRUARY 18, 2019

13 I, Aubrea Hobbs, Certified Shorthand Reporter in
14 and for the State of Texas, hereby certify to the
15 following:

16 That the witness, ROBERTO FELIX, was duly sworn by
17 the officer and that the transcript of the oral
18 deposition is a true record of the testimony given by
19 the witness to the best of my ability;

20 That the deposition transcript was submitted on
21 _____ to the witness or to the attorney
22 for the witness for examination, signature and return to
23 me by _____.

Exhibit 1





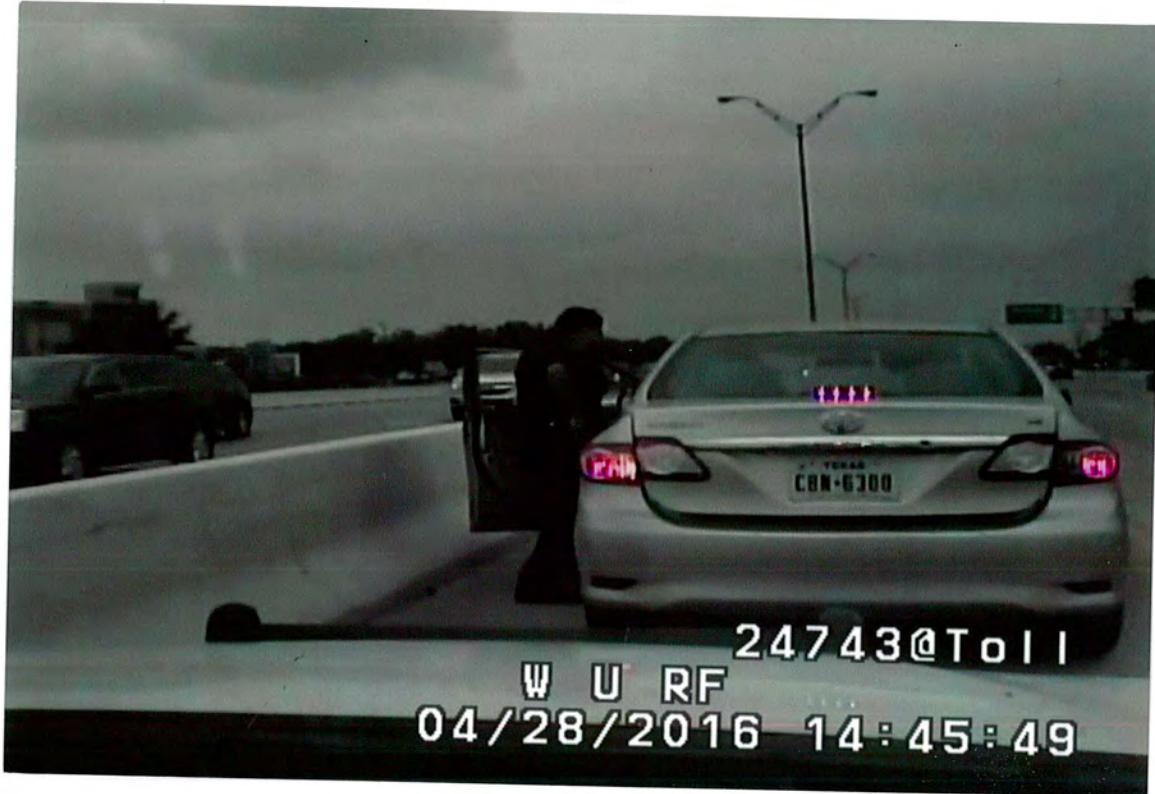
Exhibit 3

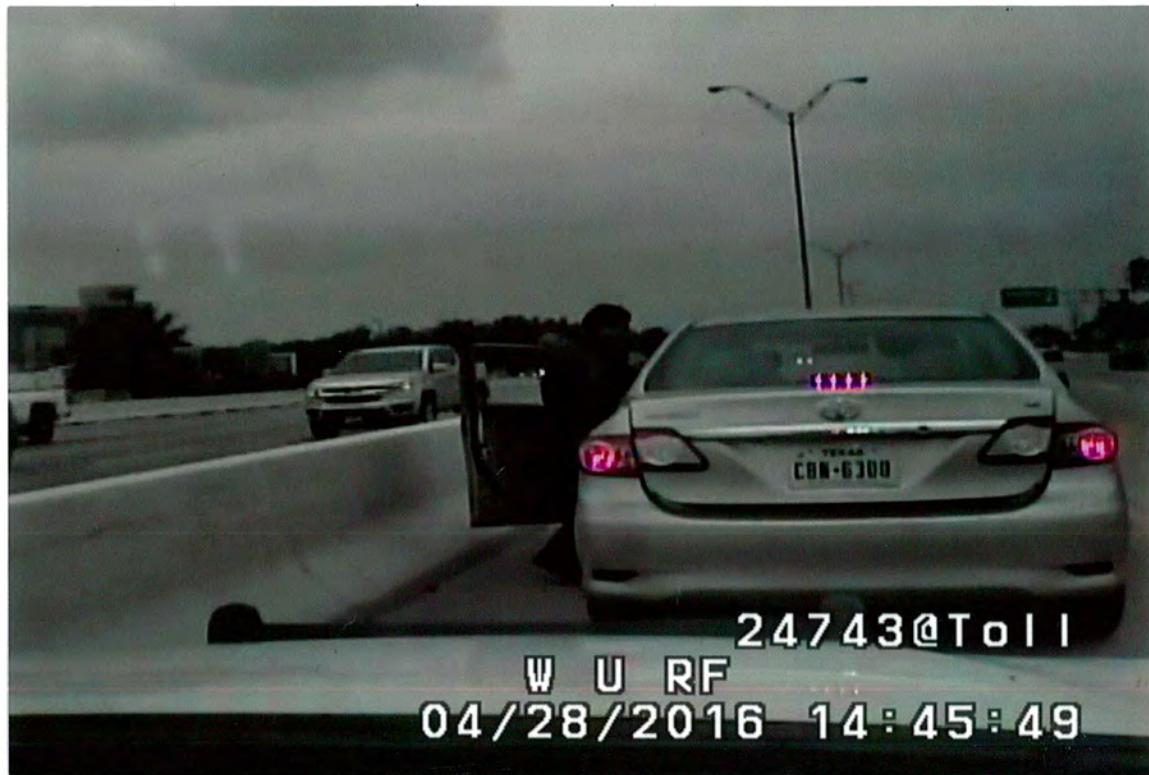


























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04/28/2016 14:48:43



24743@Toll

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04/28/2016 14:49:21





Texas Commission On Law Enforcement
Personal Status Report

Name	TCOLE ID (P ID)	STATUS		
ROBERTO FELIX JR	██████████			
Citizen	Race	Gender	Federal ID	State ID
Yes	Hispanic	Male	██████████	██████████

Education Information

Institution	Hours	Education
	0	High School
	0	College Credits
Total Hours	0	
Total Training Hours	0	

Service History

Appointed As	Department	Award	Service Start Date	Service End Date	Service Time
Peace Officer	HARRIS CO. CONST. PCT. 5	Peace Officer License	10/2/2004		14 years, 0 months
Jailer	HARRIS CO. SHERIFF'S OFFICE	Jailer License	7/12/2003	10/1/2004	1 years, 2 months

Total Service Time

Description	Service Time
Jailer	1 years, 2 months
Peace Officer	14 years, 0 months
Total officer time	14 years, 0 months



Award Information

Award	Type	Action	Action Date
Temporary Jailer License	License	Granted	7/22/2003
		Expired - Time limit exceeded	1/11/2007
Jailer License	License	Granted	12/3/2003
		Inactive – Out of Compliance	9/1/2013
Peace Officer License	License	Granted	9/29/2004
		Certification Issued	7/12/2004
Basic Jailer	Certificate	Certification Issued	10/3/2005
		Certification Issued	7/27/2011
Basic Peace Officer	Certificate	Certification Issued	9/15/2013
		Certification Issued	
Intermediate Peace Officer	Certificate	Certification Issued	
		Certification Issued	
Advanced Peace Officer	Certificate	Certification Issued	
		Certification Issued	

Academy History

	Date	Institution	Course Title
Completed	7/27/2004	University of Houston - Downtown LEA	Basic Peace Officer
Completed	11/13/2003	Harris County Sheriff's Academy	Basic County Jail Course

Courses Completed

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Hours	Institution	Training Mandates
2029	Tech. Interviewing & Interrog.	10/5/2018	24	Houston Police Academy	
3185	85th Legislative Session Legal Update	9/13/2018	4	Texas Municipal Police Association	85th Session State and Federal Law Update
1849	De-escalation Tech (SB 1849)	8/23/2018	8	Combined Law Enforcement Asso. of Texas	De-escalation Tech (SB 1849)
6011	Alcohol/Drug Abuse Recognition	8/13/2018	4	Texas Municipal Police Association	
8158	Body Worn Camera	7/25/2018	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3854	Computer Operations	7/6/2018	16	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3347	Less Lethal Electronic Control Device Update	3/13/2018	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3849	Post Critical Incident Training	2/28/2018	24	Bill Blackwood LEMI of Texas	
8815	Building Search	2/23/2018	8	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3404	Traffic Stops	2/22/2018	8	HARRIS CO. CONST. PCT. 5 (Training Rosters)	

HC/BARNES-1722

Courses Completed

09/01/2017 - 08/31/2019 *

Course No.	Course Title	Course Date	Hours	Institution	Training Mandates
					Unit Hours
2065	Lidar Radar Training	2/6/2018	2	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
					106

09/01/2015 - 09/30/2017

Course No.	Course Title	Course Date	Hours	Institution	Training Mandates
2024	Narcotics/Dangerous Drug Inv.	8/7/2017	4	Houston Police Academy	
3102	Civil Process Exemption by Constable	6/1/2017	0	HARRIS CO. CONST. PCT. 5 Civil Process (Training Rosters)	
3403	Selective Traffic Enforcement	3/29/2017	8	Texas Department of Motor Vehicles	
3347	Less Lethal Electronic Control Device Update	3/2/2017	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2049	Report Writing - general	2/13/2017	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
8813	Below 100	1/12/2017	4	Texas City Police Academy	
3322	Patrol Rifle	10/14/2016	32	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3702	Field Training Officer	10/9/2016	20	OSS Academy	
4065	Canine Encounters (Intermediate/Advance)	7/26/2016	4	Harris County Sheriff's Academy	Canine Encounter (Intermediate) Canine Encouter (Advance)
3347	Less Lethal Electronic Control Device Update	6/14/2016	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2065	Lidar Radar Training	5/10/2016	2	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3104	Tire Deflation Device Training	2/10/2016	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3150	Law Update	1/7/2016	2	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3334	Firearms Electronic Simulator	12/9/2015	2	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3847	Excited Delirium Syndrome	12/3/2015	8	Harris County Constable Pct. 4	
3184	84th Legislative Session Legal Update	10/20/2015	4	Hempstead Police Dept.	84th Session State and Federal Law Update
2071	Accident Reconstruction	9/4/2015	80	Harris County Constable Pct. 8	
					186
					Unit Hours

Courses Completed

09/01/2013 - 08/31/2015

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2070	Accident Investigations	8/21/2015	40	Harris County Constable Pct. 8	
3344	Less Lethal Electronic Control Device Training	4/1/2015	16	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2070	Accident Investigations	11/14/2014	24	Harris County Constable Pct. 8	
2065	Lidar Radar Training	11/11/2014	2	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3843	CIT-Update	10/10/2014	8	Texas Municipal Police Association	Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 2009-09
3881	Emergency Management (General Number)	7/31/2014	8	Harris County Constable Pct. 8	
3100	LAW	3/31/2014	1	Harris County Sheriff's Academy	
3845	CPR	3/24/2014	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
1994	Learn Our TCOLE Site	3/1/2014	1	TCOLE Online	
2017	Crime Scene Investigation	2/20/2014	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3183	83rd Legislative Session Legal Update	2/20/2014	4	Houston Community College Police Academy	83rd Session State and Federal Law Update
3313	ALERRT Terrorism Response Tactics Active Shooter L	9/22/2013	16	Hays Co. Sheriff's Academy	
Unit Hours				128	

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
2049	Report Writing - general	8/6/2013	6	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2053	Baton (All)	6/7/2013	8	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2055	Firearms	2/11/2013	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2046	Driving	1/20/2013	20	Houston Community College Police Academy	
3270	Human Trafficking	9/25/2012	4	Houston Community College Police Academy	Human Trafficking
2054	Radar	8/16/2012	2	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
66704	FEMA NIMS Comm& Info Management (FEMA IS-704)	7/16/2012	2	HARRIS CO. CONST. PCT. 5 (Training Rosters)	

Courses Completed

09/01/2011 - 08/31/2013

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3402	DWI/DUI Detection and Enforcement	6/15/2012	1	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2178	S.F.S.T. Practitioner Update	4/30/2012	8	Houston Community College Police Academy	
3182	82nd Legislative Session Legal Update	1/30/2012	4	Houston Community College Police Academy	82nd Session State and Federal Law Update
3151	Health and Safety Code	9/19/2011	1	Harris County Sheriff's Academy	
3100	LAW	9/19/2011	1	Harris County Sheriff's Academy	
3102	Civil Process Exemption by Constable	9/1/2011	0	TCLEOSE MITIGATING CIR. Civil Process	
Unit Hours				61	

09/01/2009 - 08/31/2011

Course No.	Course Title	Course Date	Course Hours	Institution	Training Mandates
3400	Traffic	8/12/2011	2	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3270	Human Trafficking	7/24/2011	4	Classen Buck Seminars, Inc.	Human Trafficking
2106	Crime Scene Investigation (Intermediate)	6/28/2011	32	Classen Buck Seminars, Inc.	Crime Scene Investigation (Intermediate)
2107	Use of Force (Intermediate)	6/14/2011	13	Classen Buck Seminars, Inc.	Use of Force (Intermediate)
2105	Child Abuse Prevention and Investigation (Interm.)	4/2/2011	24	Classen Buck Seminars, Inc.	Child Abuse Prevention and Investigation (Intermediate)
3800	Technical/Specialized	1/24/2011	1	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2054	Radar	10/7/2010	8	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2095	Use of Force (Non-Intermediate Core Course)	8/15/2010	1	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
2046	Driving	8/11/2010	16	Houston Community College Police Academy	
3264	Special Investigator Certification Course	4/29/2010	24	Texas Municipal Police Association	Special Investigative Topics (Intermediate)
2095	Use of Force (Non-Intermediate Core Course)	3/19/2010	1	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3181	81st Legislative Session Legal Update	12/10/2009	8	Houston Community College Police Academy	State and Federal Law Update
3400	Traffic	12/6/2009	3	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
3358	Police Bicycle	10/9/2009	40	Houston Police Academy	
2108	Arrest, Search, and Seizure (Intermediate)	10/4/2009	15	Classen Buck Seminars, Inc.	Arrest, Search, and Seizure (Intermediate)
Unit Hours				192	

Courses Completed

09/01/2007 - 08/31/2009

Course No.	Course Title	Course Date	Hours	Course Institution	Training Mandates
3305	Active Shooter Response	8/4/2009	16	Houston Community College Police Academy	
2095	Use of Force (Non-Intermediate Core Course)	5/29/2009	8	Houston Community College Police Academy	
3256	Racial Profiling	2/9/2009	7	TCOLE Online	Racial Profiling (Intermediate)
3255	Asset Forfeiture	2/3/2009	4	TCOLE Online	Asset Forfeiture (Intermediate)
3277	Identity Theft	1/28/2009	4	TCOLE Online	Identity Theft (Intermediate)
2110	Spanish for Law Enforcement Distance (Intermed.)	6/17/2008	32	Classen Buck Seminars, Inc.	Spanish for Law Enforcement (Intermediate) Spanish for Telecommunicators (Intermediate)
3939	Cultural Diversity	3/21/2008	4	University of Houston - Downtown LEA	Cultural Diversity (Intermediate)
3150	Law Update	3/21/2008	4	University of Houston - Downtown LEA	
3232	Special Investigative Topics	3/20/2008	8	University of Houston - Downtown LEA	Special Investigative Topics (Intermediate)
3800	Technical/Specialized	9/13/2007	4	HARRIS CO. CONST. PCT. 5 (Training Rosters)	
		Unit Hours	91		

09/01/2005 - 08/31/2007

Course No.	Course Title	Course Date	Hours	Course Institution	Training Mandates
3200	Investigations	2/7/2007	8	Houston Community College Police Academy	
3841	Crisis Intervention Training	2/6/2007	16	Houston Community College Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18 Crisis Intervention Training (Intermediate) issued prior to 4-1-18 Peace Officer Intermediate Options Peace Officer Intermediate Options 1987-01 Peace Officer Intermediate Options 2005-01 Peace Officer Intermediate Options 2006-01 Peace Officer Intermediate Options 2009-09
3800	Technical/Specialized	12/12/2006	8	Harris County Sheriff's Academy	
2108	Arrest, Search, and Seizure (Intermediate)	4/12/2006	16	Houston Community College Police Academy	Arrest, Search, and Seizure (Intermediate)

Courses Completed

09/01/2005 - 08/31/2007

Course No.	Course Title	Course Date	Hours	Course Institution	Training Mandates
2067	S.F.S.T. Practitioner	11/17/2005	24	Houston Community College Police Academy	
3102	Civil Process Exemption by Constable	9/1/2005	0	TCLEOSE MITIGATING CIR. Civil Process	
		Unit Hours	72		

09/01/2003 - 08/31/2005

Course No.	Course Title	Course Date	Hours	Course Institution	Training Mandates
3200	Investigations	6/23/2005	8	Houston Community College Police Academy	
3841	Crisis Intervention Training	6/22/2005	8	Houston Community College Police Academy	Crisis Intervention Training (AdvPOC) issued prior to 4-1-18
					Crisis Intervention Training (Intermediate) issued prior to 4-1-18
					Peace Officer Intermediate Options
					Peace Officer Intermediate Options 1987-01
					Peace Officer Intermediate Options 2005-01
					Peace Officer Intermediate Options 2006-01
					Peace Officer Intermediate Options 2009-09
3102	Civil Process Exemption by Constable	6/16/2005	0	TCLEOSE MITIGATING CIR. Civil Process	
55021	Computer Crimes	2/15/2005	8	Houston Community College Police Academy	
3807	TCIC/NCIC for Less than Full Access Operators	12/8/2004	8	Texas Department of Public Safety LEA	
3722	Peace Officer Field Training	11/13/2004	240	HARRIS CO. CONST. PCT. 5	Peace Officer Field Training (Training Rosters)
3800	Technical/Specialized	10/7/2004	4	Harris County Sheriff's Academy	
1000	Basic Peace Officer	7/27/2004	630	University of Houston - Downtown LEA	Cultural Diversity (Mandate) Special Investigative Topic (Mandate)
3300	Patrol/Tactical	7/24/2004	8	University of Houston - Downtown LEA	
3300	Patrol/Tactical	7/10/2004	4	University of Houston - Downtown LEA	
3500	Jail	11/14/2003	8	Harris County Sheriff's Academy	

Courses Completed

09/01/2003 - 08/31/2005

Course No.	Course Title	Course Date	Hours	Course Institution	Training Mandates
1007	Basic County Jail Course	11/13/2003	106	Harris County Sheriff's Academy	Cultural Diversity (Intermediate)
		Unit Hours	1032		

09/01/2001 - 08/31/2003

Course No.	Course Title	Course Date	Hours	Course Institution	Training Mandates
1999	Personnel Orientation by Dept. Basic Proficiency	3/10/2003	0	OTHER TRAINING	Personnel Orientation
		Unit Hours	0		
		Total Hours	<u>1868</u>		

Total Hours

Total Training Hours From Education	0
Total Course Hours	<u>1868</u>
Total Hours	<u>1868</u>

*Courses submitted between 09/01/2017 and 09/30/2017 will be credited to the 2015-2017 and 2017-2019 training unit, but will only count once toward total training hours.

Barney's Relix 000196

Message From Terminal/Unit: SDR Operator: GATE
Date/Time Sent: 02-MAY-2016 15:15:38
A3X1.HPD#3371.IUR0097.

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TXT

LIC CBN6300 MAY/2016 OLD # CBN6300 MAY/2015 EWT 2900 GWT .2900
PASSENGER-TRUCK PLT, STKR REG CLASS 02 \$ 78.50 HARRIS CNTY
TITLE 10101541602151551 ISSUED 12/06/2013 ODOMETER 7 REG DT 06/09/2015
2013, TOYT, COR, 4D, 5YFBU4EE7DP150577, PASS, COLOR: SIL, PRICE \$ 0.00
PREV OWN FRED HAAS TOYOTA COUNTRY, HOUSTON, TX
OWNER THE MINT LEASING INC, ID#=N/A,
323 NORTH LOOP W., HOUSTON, TX, 77008
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LIEN 11/25/2013, RAVEN ASSET-BASED OPPORTUNITY, FUND I LP, 110 GREENE STREET
SUITE 1102, NEW YORK, NY, 10012
PLATE AGE: 2 LAST ACTIVITY 06/20/2015 RENEW OFC: 101
REMARKS ACTUAL MILEAGE, DATE OF ASSIGNMENT: 2013/04/18. PAPER TITLE.
MRI: 67205731 IN: MVDWS 112113 AT 02MAY2016 15:15:38
OUT: A3X1 30419 AT 02MAY2016 15:15:38



HOUSTON POLICE DEPARTMENT

Homicide Division

WITNESS STATEMENT

Incident Number: 54036616



County of Harris

State of Texas

Date: 4/28/2016

Time: 7:10 PM

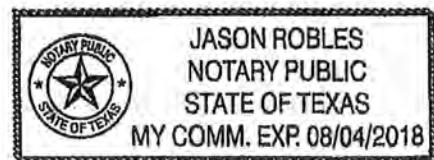
Before me, the undersigned authority, this day, personally appeared Roberto Felix, a DEPUTY/H C CONSTABLE believed by me to be a credible person, who after being sworn upon his oath, did depose and say:

My name is Roberto Felix. My payroll number is 906611 and I do not have a badge number. I am a DEPUTY/H C CONSTABLE and I am assigned to the Harris County Constables Pct 5 Toll Road Division on the Days shift. My office telephone number is 281-492-3600. My duty weapon is a Glock/ Mod 22C/ 40 cal, serial number HKD796. My duty weapon did discharge.

I, Deputy R .Felix Unit 85T14, while on patrol on 4/28/16 heard a call for a prohibited vehicle that HCTRA dispatched as traveling southbound from South Sam Plaza. I advised dispatch to send the call and began looking for the vehicle. I received the license plate for the vehicle a second time and checked it to obtain the color of the vehicle as silver. I continued southbound looking for the vehicle and was able to find it. I confirm the license plate with dispatch and advised them of my location of stopping the vehicle. I approached the suspect's vehicle and advised the suspect why he was being stopped and requested his driver license and insurance. He stated that it was a rental car and that he did not have his driver license. I smelled a strong odor of marijuana coming from the vehicle and requested a unit to check by as I knew I would have to get the suspect out of vehicle for further investigation. He then grabbed a handful of papers and started to go through them but only flipping through them and not actually looking at them. He then reached over towards the passenger floor board towards a red plastic cup that had what appeared to have trash in it. I told him not to reach over in that area and he then went back to look through the papers. He then reached over and turned off the ignition and placed his keys in the gear shift area. I asked him if he had anything in the vehicle I should know about because I smelled marijuana. He stated that he did not and said that his driver license was in the trunk and I could get it and search if I wanted to. I told him to go ahead and open the trunk as if I was going to look for it. I opened the driver door and told the suspect to step out. As I did so he grabbed his keys and turned on the vehicle. I drew my weapon and told him something like don't do it, as he started to put the car in drive. At the same time I was trying to keep him from doing so my body

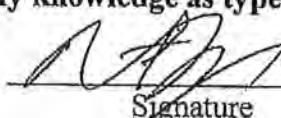
I have read this portion of this, my statement, and find it to be true and correct to the best of my knowledge as typed by Roberto Felix

Signature
Notary Public



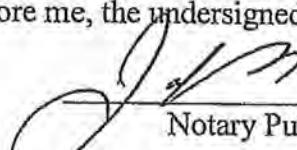
was partially in the vehicle as he accelerated away. As the vehicle sped away I felt the driver door closing on me and starting to feel that I was being pinned and going to be drug. I quickly jumped onto the door seal and held on so I wouldn't get run over. My left arm and upper torso was out of the vehicle with trying to keep a grip on the windshield fearing I would be thrown off. I was unable to see anything inside the vehicle but I could feel my right hand that was holding on to my duty weapon being moved and pressure on my gun. I believe I yelled for him to stop and at that point fearing that I would either get thrown from the vehicle or crushed by the retaining wall I fired my weapon once and it had no effect. The vehicle then sped up and fearing that the suspect could kill me by him taking my weapon or crushing me I fired a second time. The vehicle then slowed down almost to a stop and I jumped off and held the suspect at gun point. I advised dispatch that shots were fired and for them to send HFD. I held him at gun point and a secondary unit arrived to assist. We both maintained him at gun point until a third deputy showed up, which I then holstered my weapon and stood to the side because of leg pain I was feeling. When additional units arrived I went back to my patrol vehicle and sat down.

I understand that this statement is voluntary and not required by departmental policy. I have made this statement voluntarily and have read this, my statement, and find it to be true and correct to the best of my knowledge as typed by Roberto Felix.



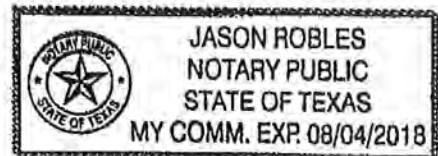
Signature

Subscribed and sworn to before me, the undersigned authority, this the 28th day of April, 2016

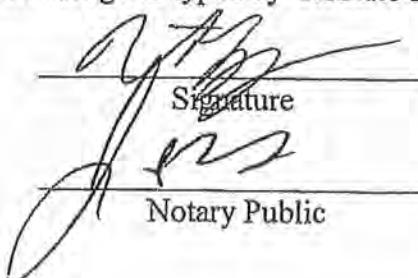


Notary Public

End of statement of Roberto Felix.

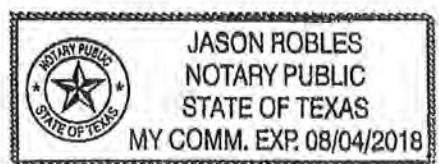


I have read this portion of this, my statement, and find it to be true and correct to the best of my knowledge as typed by Roberto Felix



Signature

Notary Public



540366-16

Suppl No
0013

HOUSTON POLICE DEPARTMENT



Houston Police Department
1200 Travis Street
Houston, Texas 77002
713-884-3131 Emergency Dial 9-1-1

Reported Date
05/02/2016

Offense Report Title

Aggravated Assault (Other Peace Officer)

Officer Name
ROBERTS, B A

Administrative Information

Agency HOUSTON POLICE DEPARTMENT	Incident # 540366-16	Suppl No 0013	Reported Date 05/02/2016	Reported Time 12:51
Status Report Written or to Follow	Offense Report Title Aggravated Assault (Other Peace Officer)			
CAD Call Type 1000				
Address 6650 W BW 8 S				City Houston
ZIP Code 77072	Dist/Beat HCC5	Station OJ	District 00	From Date 04/28/2016 From Time 14:49
Officer Name / Employee# ROBERTS, B A / 151143	Division North - Evenings - Patrol			
Report Entered By / Employee# ROBERTS, B A / 151143	Division North - Evenings - Patrol			
Conf Wrk Group HOMICIDE DIVISION	RMS Transfer Successful	Property Trans Stat Successful	Approving Officer 119916	Approval Date 05/03/2016
Approval Time 06:38:13				

Modus Operandi

Gang Act?	Property Targeted
No	Drugs - Narcotics

Brief Summary

*****Scene Log*****

Narrative

Introduction:

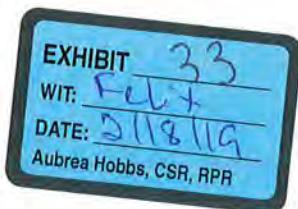
I, Officer B. Roberts and currently assigned on a temporary rotation to the Houston Police Departments Homicide Division.

On Thursday, April 28th at 1520 hours, I was at 1200 Travis, on the sixth floor in the homicide division. I was informed by Sgt. Robles of an officer involved shooting at 7500 West Sam Houston Pkwy.

I learned that Deputy Felix 85T14 PR# 906611 was conducting a traffic stop on the southbound lanes of the West Sam Houston Pkwy. The Deputy noticed odor of marijuana in vehicle and ordered the suspect to exit the vehicle. The suspect refused and deputy tried to remove the suspect. The suspect attempted to flee in vehicle and drug Deputy Felix approximately twenty yards. Deputy Felix discharged his firearm once striking the suspect in the chest. HFD respond and pronounced the suspect DAO at 1458 hours.

Sgt. Robles instructed me to compose the scene log to this incident.

Scene Log:

Houston Fire Department

Medic #75

Erik Steen #119560

Reise Byrd #152480

Jordan Downing #126407

Engine #69

Report Officer
151143/ROBERTS, B A

Printed At
05/17/2016 16:51

Page 1 of 3

Harris County Constable Precinct Five

Foreward

The Standard Operating Procedures are established and published by the Constable and is intended for the governing and guidance of all members of the Harris County Constable Office, Precinct Five. Its contents are confidential and shall not be divulged to any unauthorized person without the express permission and written consent of the Constable.

Each Procedure will be individually numbered and members shall acknowledge receipt in writing. Members will be required to maintain their Standard Operating Procedures in good condition at all times and will be responsible for any additions, deletions or amendments. Upon termination from the Department, members shall return their Standard Operating Procedures to the Constable in good condition and will be accountable for any loss or damage.

The Constable reserves the right to amend or rescind any portion of the Standard Operating Procedures. The Standard Operating Procedures supersedes any previously issued order, policy or procedure that is in conflict with any provision.

There is no employment tenure in the Constables office. Employment is for an indefinite period and both the Constable and the employee are free to terminate employment with or without formal notice for any reason. The Standard Operating Procedures is solely for information and does not constitute an employment contract or guarantee of continued employment.



Harris County Constable Precinct Five

Administrative Rules

The Constable will establish any rule or regulation necessary or expedient for the smooth, efficient operation of the Harris County Constable's Office, Precinct Five.

These rules or regulations shall govern assignments, conduct, responsibilities, and authority of every member of the department. The Constable will specify the kind of uniforms to be worn and the equipment to be used as well as the conditions under which they will be worn or used.

The Constable shall also establish any rule or regulation needed to cover any other matter regarding the proper conduct or behavior of every member of this department he deems appropriate. It shall be the duty of every member to familiarize himself with the provisions of the Departments Standard Operating Procedure. He/she shall conform to, and abide by, such rules and regulations, observe the laws and render service to the county with enthusiasm, courage, discretion and loyalty. The failure of any member to properly and willingly abide by all of the rules and regulations of this Department can subject the member to disciplinary action or dismissal. Violations will not be tolerated.

Law Enforcement Code of Ethics

As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or what is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities, or friendship to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear of favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I accept the badge of my office as a symbol of public faith, and I accept it, as a public trust to be held as long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God and to my chosen profession.....

LAW ENFORCEMENT.

Harris County Constable Precinct Five
Standard Operating Procedures

Section: Rules Manual

Issue Date: 04/01/08

Revision Date: 08/01/09

Revision number: 1

Procedure number: **2.27**

Subject: **Carrying of Firearms**

All deputies are required to carry their handgun while on duty. When off duty, they may use their own discretion as to whether or not to carry a handgun.

Harris County Constable Precinct Five

Standard Operating Procedures

Section: Rules Manual

Issue Date: 04/01/08

Revision Date: 08/01/09

Revision number: 1

Procedure number: **2.28**

Subject: **Registration of Firearms**

All firearms carried for the purpose of performing their official duties, whether on or off duty, must be registered with the department. Required registration information must be kept current.

Harris County Constable Precinct Five

Standard Operating Procedures

Section: Field Operations

Issue Date: 1/28/13

Revision Date:

Revision number:

Procedure number: **200/1.34**

Subject: **Officer Involved Shooting**

PURPOSE: To establish guidelines to assist officers in managing officer involved shooting incidents. The aftermath of an officer involved shooting presents complex issues for the participating officer(s), the department, and the public. It is imperative that all department personnel coordinate their responses to shooting incidents, understand their roles and responsibilities and carry them out promptly and dispassionately. All personnel must firstly and most importantly summon medical aid, attend to the legal, investigative procedures, and assist involved officers in coping with the stress and perhaps trauma of what has occurred. A shooting involving the death or wounding of a citizen or officer may cause severe stress or disorientation among all participants. In taking prompt action at shooting scenes, officers not only ensure a proper legal follow up but also safeguard the mental health of their peers and of the citizens.

I. PRE-INCIDENT PREPARATION

Firearms training should include what to expect personally, departmentally, and legally after a shooting or other significant event.

II. ON SCENE AND IMMEDIATELY FOLLOWING

- A. Summon medical assistance and provide first aid if possible.
- B. Provide dispatch with any critical information.
- C. Secure crime scene/evidence.
- D. Notify on duty Supervisor (On duty Supervisor will contact their immediate supervisor, along with I.A.D.)
- E. Contact the appropriate investigating agency (H.P.D or H.C.S.O. etc.)
- F. Contact the Harris County District Attorney's Shooting Team.
- G. If, suspects are at large contact additional support (Canine, Air Support, etc.)
- H. Communicate emotional support to officer(s) involved.

Harris County Constable Precinct Five

- I. Establish a crime-scene perimeter and cordon area.
- J. If Necessary, establish a command post.
- K. Support the officer's sense of safety at the scene.
- L. The officer(s) involved in shooting should be encouraged to step away from the scene and away from media or other attention into safe supportive environment.
- M. The officer(s) should not drive themselves; they should be provided transportation.
- N. Do not isolate officer.
- O. Officers should be encouraged to talk about the incident solely with individuals with whom they have legally privileged confidentiality.
- P. Officer should be provided the opportunity to contact their family members as soon as practical.
 - 1. It is best for the officer themselves to contact their families.
 - 2. If injured or unable to contact their family, then an officer who preferably knows the family should call as soon as practical but only after receiving authorization from a supervisor. A deputy shall not contact the family of an injured or deceased officer without authorization from a supervisor.
- Q. Do not speak or make any statement to the media.
- R. Ensure the officer(s) involved do not consume depressants nor stimulants (including caffeine) unless ordered by medical personnel.
 - 1. Arrange for drug/alcohol screening if necessary.

III. INVESTIGATIVE PERIOD

- A. Officers involved in shootings or other use of force incidents which result in heightened physical and emotional reactions should be provided:
 - 1. At minimum three days of Temporary Assignment Duty in order to cope and manage their emotions if needed.
 - 2. Monitor officer(s) for signs of stress, including post-traumatic stress disorder.
- B. Officers may be asked to provide pertinent information by the investigator(s) soon after a shooting to aid the initial investigation.
 - 1. Officers often benefit from at least one night's sleep prior to being interviewed.
- C. If available, the officer may be placed in an administrative temporary assignment which may lessen the likelihood that the officer will be involved in a subsequent use-of-force incident during the on-going investigation.

Harris County Constable Precinct Five

IV. POST SHOOTING INTERVENTIONS

- A. Post shooting interventions should be conducted by only a licensed mental health professional trained and experienced in working with law enforcement personnel. Officers should be supplied with information about counseling and mental health services provided by Harris County.
 1. Officers are not mandated to attend a session with a mental health professional.
 2. Officers who choose not to attend a session with a mental health professional should be aware of the potential impact of the incident.
 - a. If not adequately addressed, these reactions may lead to severe and chronic problems requiring treatment services.
- B. Post shooting intervention is a confidential and legally privilege communicated between the mental health professional and the officer(s) involved. No information about the content of these sessions should be released without the officer's written authorization.

V. SUPERVISORS RESPONSIBILITIES

- A. Make sure proper medical attention is being afforded to any injured persons.
- B. Make necessary notification(s) as outlined in Section II of this order.
- C. Coordinate documentation of the incident by all participants and responding units.
- D. Confirm that the weapons used in the officer involved shooting are registered with the department.
- E. Submit a letter detailing the principle information pertaining to the incident through their Chain of Command. The letter shall include but not be limited to:
 1. Incident Summary
 2. Primary Investigative Agency and associated case number
 3. Number of Officers/Citizens involved injured or killed
 4. Last known condition of injured Officer(s) or Citizens

Harris County Constable Precinct Five

5. Location of Incident
6. Identify the Weapon used by the Officer(s)
7. Were department policies followed
8. Was the application of Deadly force justified in accordance with the departments use of force policy
9. Was the officer(s) provided with Mental Health Professional contact information
10. Any other information which the supervisor may deem appropriate

F. All administrative paperwork shall be completed and forwarded prior to going off duty or mutually agree with another supervisor to assume responsibility for the documentation and the submission of such.

SPECIAL EMPHASIS

No Deputy will release or make any comment to the media regarding officer involved shooting incidents and/or investigations. Such request shall be forwarded to a supervisor of the rank of Captain or higher. All media inquiries may be forwarded to the appropriate investigating agency.

Harris County Constable Precinct Five

Standard Operating Procedures

Section: Investigations

Issue Date: March 30, 1989

Revision Date: February 13, 2009

Revision number: 3

Procedure number: **200/5.06**

Subject: **Unlawful Carrying of a Weapon**

Purpose: To establish guidelines for investigating the Unlawful Carrying of a Weapon.

DEFINITIONS:

Prohibited Weapons- A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

- (1) an explosive weapon;
- (2) a machine gun;
- (3) a short-barrel firearm;
- (4) a firearm silencer;
- (5) a switchblade knife;
- (6) knuckles;
- (7) armor-piercing ammunition;
- (8) a chemical dispensing device; or
- (9) a zip gun.

Harris County Constable Precinct Five

I. RESPONSIBILITIES:

- A. Secure the weapon; if a firearm safely unload the weapon, noting the position of all live and/or spent rounds.
- B. Maintain care, control and custody of the weapon throughout the investigation in order to maintain the chain of custody.
- C. Conduct a search to determine if the weapon is stolen or wanted.
- D. Call the District Attorney's office for acceptance of Criminal Charges.
- E. File the appropriate charges. Refer to "Filing Criminal Charges" - S.O.P. 200/2.12.
- F. Generate and complete the appropriate offense report.
- G. Tag the evidence in the appropriate Property Room.

Standard Operating Procedures

Section: Administration

Issue Date: 02/19/1989

Revision Date: 01/21/13, 1/28/13

Revision number: 2

Procedure number: **30.14**

Subject: **Reporting and Investigations of Firearms Discharges by Deputies**

PURPOSE: To establish guidelines for the reporting and investigation of all firearm discharges by deputies other than those for training or lawful recreational purposes.

I. RESPONSIBILITIES:

- A. When a firearm is discharged by a deputy in the line of duty it shall be reported to a supervisor as soon as practical and an offense report will be completed and forwarded via the chain of command to the Division Commander before going off duty. If not immediately the Deputy shall also inform the supervisor of the delay in reporting the discharge. This report of a discharge should be by the most expedient means.
- B. A supervisor will make the scene of all shooting incidents involving any employee of this agency. The on scene supervisor will be responsible for notifying the appropriate primary investigating agency, the appropriate District Attorney's Office and Precinct 5 Internal Affairs.
- C. The on scene supervisor will have the responsibility of monitoring the investigation until relieved. The on scene supervisor shall determine the agency responsible for the offense report and if such responsibility lies with Precinct 5, he or she shall have the duty of assigning such offense report to the most qualified person who is available to that supervisor. Once completed, the on scene supervisor shall forward or cause to be forwarded a complete offense report to the division commander.
- D. The on-scene supervisor will have the initial responsibility of reviewing and evaluating the investigation/incident and have the responsibility of

Harris County Constable Precinct Five

determining whether departmental policies were followed. A complete report of the incident will be forwarded to the Assistant Chief Deputy for complete review.

- E. The Division Commander shall immediately notify the appropriate Assistant Chief Deputy of any discharge of a firearm coming to his or her attention of personnel assigned under his or her command.
- F. In the event of an intentional or accidental discharge of a registered weapon, when off duty, that results in property damage or injury, the Deputy shall as soon as practical notify a Patrol supervisor. The Patrol supervisor shall determine if the incident is reportable and what kind of documentation is necessary depending on the circumstances of the incident. The supervisor shall also notify via his chain of command the Captain of the concerned division.

Standard Operating Procedures

Section: Equipment and Uniforms

Issue Date: 02/19/1989

Revision Date: 01/27/09, 02/13/13, 03/11/13

Revision number: 1.2.3

Procedure number: **50.4**

Subject: FIREARMS IDENTIFICATION AND CONTROL

PURPOSE: To establish guidelines for procedures and regulations governing firearms qualification and control.

I. IDENTIFICATION OF FIREARMS

- A. A complete description of all firearms a deputy carries while acting in the capacity of a peace officer must be on file with the department.
- B. Firearms not on file with the department may not be carried by any deputy while he is acting in the capacity of a peace officer on or off duty. Only those firearms listed or described in the "Approved Duty-Weapons" section of this Standard Operating Procedure may be carried by deputies acting in the capacity of a peace officer.
- C. If a deputy wishes to carry a new weapon, he must first qualify with the weapon. The deputy must contact the department's Training Division to schedule a time.
- D. Qualification with a new weapon is required whether it is to be carried as a primary duty or off-duty weapon. The firearms instructor will verify the weapon information and document it accordingly on the weapon qualification form.

II. APPROVED PRIMARY WEAPONS

A. Primary Weapon

- I. While acting in the capacity of a peace officer, a deputy shall carry a handgun as his primary duty-weapon. Below is a description of the only firearms that have been approved for use as a primary duty-weapon by uniformed deputies, plainclothes deputies, and off-duty deputies.

Harris County Constable Precinct Five

2. Uniformed deputies may carry a revolver or semi-automatic handgun as their primary duty-weapon. Revolvers must be double action and chambered for either a .38 special, or .357 caliber and must have a barrel length of at least three inches but not more than four inches. Semi-automatic handguns used as primary duty-weapons must be chambered for 9mm, .357 Sig, .40 S&W or .45 caliber.
3. Plainclothes deputies may carry a revolver or semi-automatic handgun as their primary duty-weapon. Revolvers must be double action and chambered for either a .38 special, or .357, caliber and must have a barrel length of at least two inches but not more than four inches. Semi-automatic handguns used as primary duty-weapons must be chambered for .380, 9mm, .357 Sig, .40 S&W or .45 caliber.
4. Deputies may carry firearms while off-duty but are not required to do so. If a deputy chooses to carry a firearm while off-duty, that firearm must meet the specifications described above, according to whether or not the deputy is in uniform.
5. All duty weapons will be blue, black or silver in color. Any deviation from these colors must be approved by the Constable.
6. Revolver handguns chambered in .41, .44, or .45 are authorized if the deputy has qualified with their handgun in that caliber during the 2012 qualifications and continues to qualify with that handgun during each required department qualification thereafter. Semi-automatic handguns in calibers not listed in Subsections 2 or 3 may be authorized if the deputy has qualified with their handgun in a caliber authorized during the 2012 qualifications and continues to qualify with that handgun during each required department qualification thereafter.

III. SECONDARY WEAPONS

A deputy is authorized to carry a secondary weapon while on duty. The caliber must meet the specifications listed in Section II.A.3. of this policy. The deputy must have qualified with this weapon.

Harris County Constable Precinct Five

IV. SHOTGUNS

A. The department-approved shotguns described below may be carried on-duty. Only shotguns that have all of the following features will be approved by the department:

1. Shotguns must be pump action or semi-automatic.
2. Must be 12 Gauge and tubular feed.
3. Barrel length of shotgun must be 18 or 20 inches and may not be modified in any way. Deputies who carry shotguns shall qualify in a manner dictated by range instructors and shall demonstrate to range instructors that they have a working knowledge of their specific shotgun.
4. All shotguns must be blue, black or silver in color. The shotgun stock shall be black, or brown wood grain.
5. The shotgun shall have a solid black tactical sling.
6. Less lethal shotguns must have orange stocks and fore grips.
7. Shotgun must have a full length stock (Expandable stocks are permitted).

V. RIFLES

Refer to Standard Operating Procedure 50.9.

VI. AMMUNITION

A. Except upon approval of the Constable, no deputy shall carry any of the following types of ammunition in any weapon that he is authorized to use on duty:

1. Armor Piercing
2. Tracer ammunition
3. Glazer safety slug
4. Wad-cutter
5. Aluminum Casing ammunition
6. Reloads

B. On duty ammunition must be factory loaded ammunition.

Harris County Constable Precinct Five

C. All shotguns must be loaded with either "OO" buck, 2 1/4 inch and containing eight or nine pellets or 2 1/4 slugs.

VII. GRIPS

A. A deputy's on-duty weapon shall have the following types of grips.

1. Black or brown
2. Army Green
3. Ivory
4. Stag bone

VIII. CARRYING OF FIREARMS

- A. While on-duty or working extra employment all deputies must be properly armed as outlined in Section II. While off-duty and in plainclothes, each deputy may use his discretion in deciding whether or not to carry a firearm.
- B. While on duty and in plain clothes, all deputies should display their badge near their weapon.
- C. If a deputy decides to carry a weapon while off duty and in plain clothes, the weapon must be concealed.

IX. LIMITATIONS

A. The following limitations apply to the carrying of firearms:

1. Psychiatric Wards. Deputies may not enter any facility's psychiatric ward armed except under the most serious of circumstances.
2. Courts. While in court, deputies shall adhere to that body's policy regarding the carrying of firearms and shall surrender their firearms if a bailiff so requests.
3. Airports. Any deputy who wants to enter the sterile area of an airport should advise the proper authorities of his intentions to do so before or upon arriving at the airport terminal. The officer shall present any necessary documents or law-enforcement credentials necessary to verify his identity and shall comply with the decision of airport authorities to allow or deny access.

S.O.P. / 50.4

Firearms Identification and Control

Harris County Constable Precinct Five

4. Aircraft. Deputies should limit their requests to carry firearms aboard aircraft to those situations where a weapon is required to ensure the safe completion of a law-enforcement mission. If a deputy must travel with a firearm, the airline on which the deputy is a passenger shall be contacted for its policy on such matters. Deputies shall adhere to the rules and regulations of the airline and its pilot.

X. QUALIFYING FOR FIREARMS USAGE

Each division commander or his designee must ensure that the deputies in his division comply with the firearms policy.

XI. QUALIFYING

- A. Each deputy of this department must qualify with each and every firearm the department authorizes him to carry.
- B. Potential new hires shall qualify with a department approved weapon, for on or off duty use, prior to being sworn in. The potential new hire who fails to qualify on their first attempt will have two additional attempts to qualify prior to their swear-in date.
- C. A Deputy who fails to qualify on his/her first attempt will have two additional attempts to qualify on that same day. The deputy may choose to reschedule the other two attempts at another time during the qualification period.
- D. A Deputy who fails to qualify after their third attempt may not carry a firearm on-duty or off-duty until they have qualified under the requirements of Section XVI of this policy. If the deputy's regular duties include carrying a firearm then the deputy may be required to use paid or unpaid leave until they have qualified under Section XVI of this policy.

XII. EXAMINATION CONTENT

Qualification includes a proficiency demonstration in the care and cleaning of a deputy's firearm(s) to range personnel. In addition, all deputies of the department shall be required to complete a designated course of fire with each weapon listed on the deputy's weapons qualification form.

Harris County Constable Precinct Five

XIII. QUALIFYING

To pass the qualification examination the deputy must attain a score of 200 points (80%) or greater. The result will be recorded as a pass or fail.

XIV. MEDICAL RESTRICTIONS

- A. If a deputy is medically restricted from qualifying, he must provide acceptable documentation to his divisional Assistant Chief.
- B. The Assistant Chief will contact the department Firearms Proficiency Officer so that a record of the deputy's inability to qualify as scheduled can be created. The medically restricted deputy is responsible for making arrangements to qualify when released from the medical restriction.
- C. A deputy who has been medically restricted from qualifying and has not met the TCLEOSE time requirements for demonstrating weapons proficiency may not carry a firearm on-duty or off-duty.
- D. Reasonable accommodations will be made for Deputies who are pregnant but otherwise not medically restricted if the deputy so requests.

XV. NO ATTEMPT

- A. An "attempt to qualify" begins after discharging the first round in the course of fire during an official qualification. A "no attempt to qualify" is defined as refusing to shoot the course of fire. A deputy making no attempt to qualify may face disciplinary action up to and including termination.
- B. A deputy who has a legitimate reason for not qualifying must notify his immediate supervisor prior to his scheduled date. (Examples of legitimate absences include, but are not limited to, authorized absences, documented illnesses, and special assignments. A deputy must attempt to qualify as soon as possible after returning to his normal duty assignment) Deputies who miss his/her scheduled qualification date may be reassigned to qualify on another day.
- C. No extra job permits will be issued to or continued for any deputy who fails to comply with the departments firearms qualification requirements.

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D. All records relating to the inability to qualify after the allowed number of attempts and no-attempts are to be maintained by the Training Division.

XVI. FAILURE TO QUALIFY

A deputy must qualify as mandated by the department. A deputy who fails to qualify during the department qualification period shall meet with a firearms instructor to obtain supplementary training and will be allowed three (3) final attempts to pass the department's qualification course. The three final attempts must be made within two weeks following the date the deputy failed to pass their first set of attempts. If a deputy is still unable to qualify, the department Firearms Proficiency Officer shall notify the Training Division Assistant Chief in writing, documenting all training and failed attempts. Failure to qualify is a violation of this policy.

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Standard Operating Procedures

Section: Job Description

Issue Date: 04/01/06

Revision Date: 08/01/06

Revision number: 1

Procedure number: 100 / 1.07H

Subject: **Deputy (Toll Road)**

POSITION SUMMARY: A deputy assigned to the Toll Road Division for the Constable's Department enforces the law, protects the rights and citizenry, and provides basic police service to the public.

IMMEDIATE SUPERVISOR: Sergeant of the Toll Road Division.

I. DEFINITIONS:

A. **Duties and Powers-** It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose, he shall use all lawful means. He shall in every case where he is authorized by the provisions of the Code, interfere without warrant to preserve or suppress crime. He shall execute all lawful process issued to him by any magistrate or court. He shall give notice to some magistrate of all offenses committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law in order that they may be taken before the proper magistrate or court and be tried. (CCP Art. 2.13. DUTIES AND POWERS)

II. RESPONSIBILITIES:

- A. To protect life and property.
- B. To preserve the peace and maintain order.
- C. To prevent or suppress crime.
- D. To investigate reports of crimes.

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- E. To enforce all state laws and applicable county ordinances.
- F. To document activities, investigations, other incidents, and make arrests as required.

III. DUTIES:

- A. To operate a patrol vehicle in an assigned beat unless dispatched to a call outside of the assigned area.
- B. To respond to calls for service.
- C. To monitor vehicular traffic and issue citations to violators.
- D. To observe business and residential properties for possible criminal activity.
- E. To check buildings for unauthorized entry by searching structures and property for intruders, and investigating suspicious events.
- F. To conduct interviews with complainants, victims, witnesses, and suspects to obtain relevant facts and information, and when necessary mediate and resolve complaints and/or disputes.
- G. To make arrests, including subduing individuals with appropriate action and force necessary.
- H. To take individuals into custody, searching vehicles and persons for weapons and contraband, and transporting arrested individuals to a detention facility.
- I. To maintain a daily activity report and to assemble supporting documentation and prepare narrative reports, memorandums, and notes of accidents, incidents, and offenses which must be completed and submitted prior to ending tour of duty.
- J. To conduct criminal history checks on computer terminals.
- K. To maintain and update manuals, logs, and activity reports.
- L. To maintain inventories of equipment, materials, and supplies required for daily operations, and having equipment serviced or repaired when inoperable.

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- M. To perform follow up investigations, to include verifying personal information and criminal histories.
- N. To research other sources to confirm details determining value and reliability of physical evidence.
- O. To identify and investigate inconsistencies in statements or information obtained during initial investigation.
- P. To enforce court orders, including serving summons, subpoenas, and restraining orders, and executing search warrants.
- Q. To give assistance to citizen's inquiries and requests, giving directions, assisting with disabled vehicles, etc.
- R. To provide citizens with clarification of routine legal requirements.
- S. To open lines of communications with citizens who reside and work within the beat.
- T. To provide solutions to problems affecting the community.
- U. To be vigilant to any unusual or hazardous situations that exists within the beat, and takes appropriate action to correct these situations.
- V. To educate himself by attending in-service training classes or other institutions of higher education.
- W. To provide sworn testimony in court proceedings.
- X. To perform other duties as instructed by a supervisor.
- Y. Perform tour of duty in uniform, unless otherwise instructed.
- Z. Be prompt and present at roll-call and at all assignments, informing the Toll Road Sergeant at least 30 minutes prior to roll-call or S.O. time when unavailable or tardy due to illness or emergency.
- AA. Maintain a neat and clean uniform appearance. Ensure service weapon is clean, loaded and in good mechanical condition.

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- BB. Inform a Toll Road Sergeant when unable to end tour of duty on time due to any circumstances (i.e. court, special assignment, investigation etc).
- CC. Report all on-duty injuries immediately to an on-duty Toll Road Supervisor.
- DD. Sign-on (S.O.) and sign-off (O.D.) via police radio.
- EE. Monitor the police radio at all times, and respond immediately to all calls for service.
- FF. When possible use mobile computer to on-view, en route, arrive, and clear event status, keeping dispatch informed at all times via the police radio.
- GG. Keep unnecessary talk and chatter off the police radio. Be brief and concise in messages.
- HH. Do not use the police radio when another unit is on an emergency (i.e. chase, etc.) unless your message is of the same or greater emergency.
- II. Notify dispatcher if undue delay is encountered in response to a call.
- JJ. Other duties as may be assigned including, but not limited to, driving vehicles in high speed pursuits, physically subduing violent prisoners, performing physical rescues, etc.

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Section: Field Operations

Issue Date: 04/01/06

Revision Date: 08/01/06 1/28/13

Revision number: 1, 2

Procedure number: **200/1.19**

Subject: **Traffic Enforcement**

PURPOSE: To Establish procedures for the enforcement of traffic laws to ensure public awareness and the safe use of public roadways within the jurisdiction of the Department. Deputies shall follow the appropriate course of action and maintain proper courtesy and demeanor.

I. RESPONSIBILITIES:

- A. Prior to approaching the violator's vehicle you will notify the dispatcher of your exact location and vehicle information. You must receive an acknowledgement from the dispatcher before making contact with a violator.
- B. The following are to be considered as specific Traffic Enforcement activities:
 1. Driving while intoxicated.
 - a. Deputies shall arrest persons suspected of driving while intoxicated.
 2. Driving while license suspended.
 - a. Deputies shall arrest persons suspected of driving while their license is suspended or revoked only after having a prior conviction or for D.W.I.

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3. Speeding violations.

- a. Speeding violations may be determined by the use of a certified speed-measuring device or by pacing.
- b. Speeding violations may be enforced by verbal, written warnings or written citations.

C. The following are to be considered guidelines of typical enforcement duties for generalized traffic offenses. Enforcement duties surrounding these types of violations should normally be handled by the issuance of a written citation:

1. Hazardous violations.

- a. Unsafe behavior and unsafe conditions, which may place persons or property in danger.
- b. In extreme situations, where the actions of the violator pose substantial risk to the safety of the general public and the Deputy feels an arrest is warranted, a supervisor must be contacted for authorization.

2. Equipment violations.

3. Public carrier/ commercial vehicle violations.

4. Non-hazardous violations (i.e., expired registration, expired motor vehicle inspection, expired driver's license, failure to maintain financial responsibility, etc.).

5. Off road violations.

6. Multiple violations.

7. Newly enacted laws or regulations.

- a. Upon enactment, the Deputy should initially use written warnings as an educational tool unless otherwise mandated, the violation is aggravated or circumstances require the issuance of a citation.

8. Pedestrian and bicycle violations.

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9. Parking violations.

- a. Parking violations should be enforced based upon state law only.

D. It is important that the Deputy demonstrate officer safety as well as professionalism when he initiates a traffic stop. Traffic stops can be categorized as follows:

1. Low risk (standard) traffic stop.

- a. When a Deputy initiates a traffic stop, he shall advise Dispatch the license plate number of the vehicle and the location of the stop.

- b. The Deputy should position his vehicle behind the violator vehicle in a manner to protect the Deputy from approaching traffic.

- c. As the Deputy approaches the violator vehicle, he should scrutinize the actions of all occupants.

- d. Once the violator contact is made, the Deputy should utilize the seven (7) step violator approach technique:

1) Greeting.

2) Identify self and Department.

3) Reason for stop.

4) Legal justification.

5) Request for driver's license and proof of financial responsibility.

6) Decision/Action taken.

7) Close.

2. High risk vehicle stop.

- a. When a Deputy initiates a known felony traffic stop, he should immediately advise Dispatch the license plate number of the

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vehicle, description of the vehicle, number of occupants, location of the stop and reason for the stop.

- b. The Deputy should position his vehicle behind the suspect vehicle in a manner to protect the Deputy. The Deputy should summon sufficient back-up units before extracting the occupants from the vehicle.
- c. The Deputy in charge of the scene should issue commands in a clear and concise manner in order to extract the suspects from the vehicle. The Deputy should not approach the suspect vehicle until all occupants have been extracted and secured.

E. Hazardous Road Conditions:

1. When hazardous road conditions such as debris in the roadway, defects in the roadway and damaged or inoperable traffic control devices are observed, the Deputy shall immediately advise Dispatch to contact the appropriate Department and advise them of the hazards.
2. It may become necessary in some hazardous situations for the Deputy to initiate traffic direction and control until the hazard is rectified.

F. Medical advisory:

1. Upon encountering a driver suspected of having a mental or physical disability, disease, or other conditions that may prevent that person from safely operating a motor vehicle, the Deputy should complete and submit a Medical Evaluation Request form. This form is provided by the Texas Department of Public safety and should be submitted to the Medical Advisory Board for Driver Licensing.
2. This form should be completed in its entirety and should state the actual or suspected impairments of the driver along with copies on any reports to the action or incident for which the driver was contacted.

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G. Special Emphasis

1. Traffic law enforcement practices shall include the following:
 - a. Visible traffic patrol using marked vehicles
 - b. Traffic stops using department approved, unmarked vehicles with emergency equipment, shall not be used on a regular basis for traffic enforcement.
 - c. Both overt and covert stationary observation using marked vehicles.
 - d. Roadside safety checks.

Harris County Constable Precinct Five Standard Operating Procedures

Section: Field Operations

Issue Date: 02/5/14

Revision Date:

Revision number:

Procedure number: **200/1.37**

Subject: **RACIAL PROFILING (BIAS-BASED PROFILING)**

PURPOSE: To establish policy to unequivocally state, that law enforcement activities resulting from biased-based profiling will not be condoned, are unacceptable, and will not be tolerated by the Precinct Five Constables Office. Bias-based profiling is unethical and illegal, and serves to foster distrust of law enforcement by the community we serve. This policy will serve as a guideline for the Constable's personnel to prevent such occurrences and to protect our personnel when they act within the provisions of the law and this policy from unwarranted accusations.

It is the policy of the Harris County Precinct Five Constable's Office to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws, while insisting that citizens will only be stopped and/or detained when there exists reasonable suspicion to believe that they have committed, are committing, or are about to commit a violation of the law. It is the policy of the Precinct Five Constable's Office to protect the fundamental rights of all citizens, to equal protection under the law and to be free from unreasonable searches and seizures, as provided in the United States Constitution.

DEFINITIONS:

Bias-Based Profiling: The selection of individuals based solely on a trait common to a group for enforcement action. This includes, but not limited to, race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.

Enforcement Activities: Activities both on and off duty, undertaken by Precinct Five Constable's Office personnel that arise from their authority related to employment, oath of office, State statute, Federal Law or

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County ordinance: Activities such as traffic stops/contacts, field contacts, arrests, investigations, asset seizures and forfeiture, and general law enforcement contacts with citizens.

Reasonable Suspicion: Articulable facts and circumstances that crime is afoot or facts and circumstances which taken together with reasonable inferences thereof, would cause a reasonable police officer to suspect that a person is, has been, or is about to be involved in criminal activity.

Probable Cause: Articulable facts and circumstances which taken together with reasonable inferences thereof, would cause a reasonable police officer to believe that a crime has been committed and that a particular person committed the crime.

I. Responsibilities:

A. **Traffic Stops and Field Contacts:** The dispatcher will be notified and a MDS entry made for every traffic stop and/or field contact. Traffic stops and field contacts between Precinct Five Deputies and citizens will be conducted in a professional and courteous manner. Basic interpersonal communication protocol is:

1. Greeting in a respectful manner.
2. Identify self and Department.
3. Reason for stop or temporary detention. (Legal justification)
4. Politely ask the person if there was a reason for the violation.
5. Politely request for driver's license and proof of financial responsibility and/or other documents.
6. Inform the person as to what action is being taken, if any, and what actions they must perform as a result of the enforcement action.
7. Give a professional closing statement. Do not argue or debate with the person or use trite or colloquial expressions.

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- B. Appropriate enforcement action should always be completed and documented, generally in the form of a written report, citation, field contact form or an arrest.
- C. When enforcement action is taken, the appropriate documentation will be completed as required by the specific type of enforcement action and the guiding written directives pertaining to such enforcement action. All enforcement actions will include the gender, race, or ethnicity of a person stopped or contacted, if this information can reasonably be ascertained by physical appearance or from the driver's license or other documents provided by the individual.
- D. No motorist, once cited or warned, will be detained beyond the point where there exists no reasonable suspicion of further criminal activity.
- E. No person or vehicle will be searched in the absence of a search warrant, or a legally recognized exception to the search warrant requirement, or the person's voluntary consent. Specific guidelines pertaining to searches of vehicle, persons, or structures are outlined in the respective standard operating procedure.
- F. In the absence of a specific, credible report containing a physical or vehicle description, a person's race, ethnicity, gender or sexual orientation or combination of these will not be a factor in determining probable cause for an arrest or reasonable suspicion for a stop.
- G. The deliberate recording of any misleading information related to the actual or perceived race, ethnicity, gender or sexual orientation of a person stopped for investigative or enforcement purposes is strictly prohibited, and is cause for disciplinary action up to and including termination.

II. Investigations:

- A. Criminal Profiling, in itself can be a useful tool to assist law enforcement officers in carrying out their duties to include the investigation of criminal activity and subsequent arrest as well as asset seizure and forfeiture efforts. Bias-based profiling, however, is the selection of individuals based solely

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on a common trait of a group as defined in this policy and is not an acceptable tool.

- B. The Precinct Five Constable's Office does not condone and will not allow the use of biased-based profiling in its enforcement programs to include investigations both incidental and on-going as well as subsequent arrest and asset seizure and forfeiture.
- C. Constable's personnel will focus on a person's conduct or other specific suspect information supported by articulable facts which indicate that the person has committed a crime, is about to commit a crime, or is presenting a threat to the safety of themselves or others.
- D. All investigation will be carried out in accordance with established policies.

III. Documentation required (Video):

- A. All personnel operating marked Precinct Five Constable's Office vehicles used for law enforcement purposes and equipped with a digital video camera capable of recording video and sound will adhere to this policy.
 - 1. The digital video camera will be activated prior to every traffic stop or suspicious person/vehicle encounter, to record the behavior of the vehicle or the person. The video recorder will remain activated until the person and/or vehicle is released. Failure to activate the video camera sound prior to the traffic stop and/or contact encounter may result in disciplinary action up to and including termination. In accordance with standard operating procedure 50.7.

IV. Bias-based Profiling Complaints:

- A. Any person may file a complaint with the Constable's Office if they feel that they have been stopped, detained or searched based solely on a bias-based profile.

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- B. No person will be discouraged, intimidated, or coerced from filing such a complaint, or discriminated against because they have filed such a complaint.
- C. Any Constable's Office personnel contacted by a person who wishes to file such a complaint will be directed to contact the Internal Affairs Division.
- D. All complaints of bias-based profiling, upon conclusion will be forwarded to the Constable and will contain findings. The complaint will then be forwarded to the Disciplinary Review Board for suggestions of disciplinary action, or changes in policy, training or tactics.
- E. Depending on the findings of a complaint as well as the specific factors involved, corrective measures will be taken to remedy violations. Corrective measure may include but are not limited to, training counseling, and discipline up to and including termination.
- F. The internal Affairs Division will compile statistical data of all bias-based profiling complaints which will include the findings as to whether each case was sustained, not sustained, or exonerated.

V. Supervisors Responsibilities:

- A. Division Commanders will be apprised of all bias-based profile complaints involving personnel under their command.
- B. It is the responsibility of each first line supervisors to monitor activities of their personnel and to identify potential bias-based profile activity.
- C. All supervisors will be particularly alert to potential patterns and practices of their personnel that may indicate bias-based profiling and treatment of individuals.
- D. All first line supervisors will monitor activities of their personnel to identify repeated violation(s) of Section III of this policy.

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VI. Training:

A. Training related to bias-based profiling will be provided to sworn personnel. The training will be provided and coordinated through the department Training Division in accordance with TCOLE required curriculum.

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Racial Profiling (Bias-Based Profiling)

Harris County Constable Precinct Five Standard Operating Procedures

Section: Arrest & Apprehension

Issue Date: 04/01/06

Revision Date: 07/11/2013

Revision number: 3

Procedure Number: **200/2.14**

Subject: Use of Force and Deadly Force

PURPOSE: It is the policy of the Harris County Constable's Office Pct. 5 to provide officers with guidelines for the use of force and deadly force in effecting a lawful arrest or search in accordance with:

TEXAS PENAL CODE § 9.51 Arrest and Search (Authorized Use of Force by Peace Officers); and

TEXAS PENAL CODE § 9.52 Prevention of Escape from Custody.

Arrest without warrant:

TEXAS CODE OF CRIMINAL PROCEDURE Art. 14.01 Offense within View;

TEXAS CODE OF CRIMINAL PROCEDURE Art. 14.03 Authority of Peace Officers;

TEXAS CODE OF CRIMINAL PROCEDURE Art. 14.04 When Felony has been Committed; and

TEXAS CODE OF CRIMINAL PROCEDURE Art. 14.05 Rights of Officer (to enter residence).

Arrest with Warrant:

TEXAS CODE OF CRIMINAL PROCEDURE Art. 15.16 How Warrant is Executed;

TEXAS CODE OF CRIMINAL PROCEDURE Art. 15.24 What Force May be Used; and

TEXAS CODE OF CRIMINAL PROCEDURE Art. 15.25 May Break Door (Felony Warrant).

This policy applies to all peace officers and part-time peace officers engaged in the discharge of official duties.

All personnel have received training in the use of force and must understand the application of force as detailed in Graham V. Conner (U.S. 1989).

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I. DEFINITIONS:

- A. Force- The amount of effort required by police to compel compliance by an unwilling subject.
- B. Non-Deadly Force- all force used by an officer that does not create a substantial risk of causing death or serious bodily injury.
- C. Deadly Force- all use of force techniques that an objectively reasonable officer would know creates a substantial risk of death or serious bodily injury.
- D. Serious Bodily Injury- means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.
- E. Weapon- any instrument designed to be used to apply force or by its manner of use applies force to the person of another.
- F. Approved Weapon- a device or instrument which an officer has received permission from the agency to carry and use in the discharge of that officer's duties, and for which the officer has demonstrated proficiency and developed a knowledge and understanding of the law, rules and regulations regarding the use of such weapons.
- G. Impact Weapons- objects and instruments that are used, or are designed to be used, to apply force to the person of another by coming into physical contact with that person.
- H. Chemical Agents- chemical irritants including CN/Chloracetophenone, OC/Oleoresin Capsicum, CS/Orthochlorobenzalmalononitrile or combinations of these chemical agents.
- I. Probable Cause- is a "nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."¹ What is required is simply "a reasonable ground for belief of guilt,"² - a "probability, and not a *prima facie* showing, of criminal activity."³ "A police officer may draw inferences based on his own experience in deciding whether probable cause exists."⁴

¹ *Maryland v. Pringle*, 540 U.S. 366, 370, 124 S.Ct. 795, 157 L.Ed.2d 769 (2003) (internal quotation marks omitted).

² *id.*, at 371, 124 S.Ct. 795 (same).

³ *Illinois v. Gates*, 462 U.S. 213, 235, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) (same).

⁴ *Ornelas v. United States*, 517 U.S. 690, 700, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).

officer may lack probable cause for an arrest when justified by suspicion that criminal activity is afoot, (reasonably grounded, but short of probable cause). In these situations the officer must be positioned to act instantly on reasonable suspicion that the persons temporarily detained are armed and dangerous. Thus a limited search of outer clothing for weapons serves to protect both the officer and the public. And in this situation a pat-down search is reasonable under the Fourth Amendment.⁶

II. RESPONSIBILITIES:

A. Use of Deadly Force

This policy and set of rules provide clear guidelines for Harris County Constable's Office, Precinct Five, Deputies' use in making decisions regarding the use of their firearms. The policy was developed with serious consideration for the safety of both the deputies and the public, and with the knowledge that deputies must sometimes make split-second decisions in life and death situations. This policy and set of rules will be the standards by which the actions of deputies will be measured.

The Constable's Office Precinct Five places its highest value on the life of its deputies and the public. The Department's policies, rules and procedures are designed to ensure that this value guides the use of firearms by deputies.

The citizens of Harris County, State of Texas, and Precinct Five have vested in their deputies the power to carry and use firearms in the exercise of their service to society. This power is based on trust and therefore, must be balanced by a system of accountability. The serious consequences of the use of firearms by deputies necessitate the specification of limits for deputy discretion; there is often no appeal from a deputy's decision to use a firearm. Therefore, it is imperative that every effort must be made to

¹ *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

⁶ See e.g. *Arizona v. Johnson*, 129 S.Ct. 781, 786 (January 26, 2009) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)).

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ensure that such use is not only legally warranted but also rational and humane.

The basic responsibility of deputies to protect life also requires that they exhaust all other reasonable means for apprehension and control before resorting to the use of firearms. Deputies are equipped with firearms as a means of last resort to protect themselves and others from the imminent threat of death or serious bodily injury.

Even though all deputies must be prepared to use their firearms when necessary, the utmost restraint must be exercised in their use. No deputy will be disciplined for not discharging a firearm if that discharge might threaten the life or safety of an innocent person, or if the discharge is not clearly warranted by the policy and rules of the department.

Above all, this Department values the safety of its employees and of the Public. Likewise, it is believed that deputies should use firearms with a high degree of restraint. Therefore, it is the policy of this Department that the use of firearms is never to be considered routine, is permissible only in defense of life or serious bodily injury, and then only after other reasonable means have been exhausted, taking into consideration the information known or perceived by the officer at the time force was used.

B. RULES

The policy stated above is the basis of the following set of rules that have been designed to guide deputies in all cases involving the use of firearms:

1. Deputies shall not discharge their firearms except to protect themselves or another person from imminent death or serious bodily injury.
2. Deputies shall discharge their firearms only when doing so will not endanger innocent persons.
3. Deputies shall not discharge their firearms to threaten or subdue persons whose actions are destructive to property or injurious to themselves but which do not represent an imminent threat of death or serious bodily injury to the deputy or others.
4. Deputies shall not discharge their firearms to subdue an escaping suspect who presents no imminent threat of death or serious bodily injury.

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including inferences "that might well elude an untrained person."⁵ The Constitution is satisfied so long as the officer has "probable cause" to believe that the suspect has committed or is committing a crime."

J. Reasonable Suspicion-permits an investigatory stop "in situations where the officer has a reasonable suspicion"

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5. Do not discharge a firearm from a moving vehicle or at a fleeing vehicle unless you reasonably believe that deadly force is immediately necessary to protect yourself or another person from unlawful deadly force. (Refer to S.O.P. 200/2.14 Use of Force)
6. Deputies shall not fire warning shots.
7. Deputies shall not discharge their firearms at any animal unless it is absolutely necessary to do so to protect themselves or another person from imminent serious bodily injury or possible death. Deputies in making decisions regarding the use of firearms when confronted with animals that are injured, rabid, etc., shall have before resorting to the use of firearms:
 - a. Authorization from a supervisor and
 - b. Have exhausted all other reasonable means of control or confinement.
8. If reasonable, an officer should give a verbal warning before using or attempting to use deadly force. If an officer does not give a verbal warning, the officer will document the reason(s) a verbal warning was not reasonable.

C. Use of Non-Deadly Force

If is the policy of this agency to accord officers discretion in the use of non-deadly force to the extent permitted by the Fourth Amendment and Texas Penal Code § 9.51(a), which permits police officers to use reasonable force to:

1. make or assist in making a lawful arrest or search; or
2. prevent or assist in preventing escape after arrest; and
3. before using force the officer manifests his purpose to arrest or search and identifies himself as a peace officer, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

In determining the degree of force that is reasonable under the circumstances, officers should consider and document these factors:

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1. whether the suspect is actively refusing to comply with lawful orders, or
2. whether the suspect is actively resisting arrest, or
3. whether the suspect poses an immediate or ongoing threat to the safety of the officers or others; or
4. Whether the suspect is attempting to evade arrest by flight.

There could be other non-listed factors to show that this use of force was objectively reasonable. Each use of force is different and fact-specific.

The officer's report should articulate the factor's the officer considered at the moment they used force. These factors will determine whether the degree of force was reasonably necessary. Answer the question: What makes this use of force reasonable under these circumstances?

D. General Rules Governing Use of Force

1. It is recognized that officers are expected to make split-second decisions in tense, uncertain and rapidly evolving circumstances and that the amount of time available to evaluate and respond to changing circumstances may impact the decision. While various degrees of force exist, each officer is expected to use that degree of force, which is reasonable under the circumstances, to successfully accomplish the legitimate law enforcement purpose in accordance with this policy. Factors which determine the reasonable use of force include, but are not limited to:
 - a. The conduct of the individual being confronted (as reasonably perceived by the officer at the time)
 - b. Multiple subjects
 - c. Location, terrain, lighting conditions
 - d. Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion)
 - e. Influence of drugs/alcohol (mental capacity, sensation of pain)
 - f. Proximity of weapons or unknown weapons

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- g. Availability of other options (reasonably available to the officers under the circumstances)
- h. O. C., Electronic Control Device, Body Armor or Ballistic Shield, or Less lethal shotgun
- i. Seriousness of the suspected offense or reason for contact with the subject
- j. Special knowledge/imminent danger
- k. Training and experience of the officer
- l. Potential for injury to citizens, officers and suspects
- m. Risk of escape
- n. Other exigent circumstances

2. Officers should use the least amount of force reasonably necessary to accomplish the intended objective without impairing the safety of the officer or others. This provision should not be construed to require officers to first attempt using types and degrees of force that reasonably appear to be inadequate to accomplish the intended objective.
3. Protracted hand-to-hand combat may be harmful to the public safety, the safety of law enforcement personnel, and the safety of the person being arrested or captured. Accordingly, it shall be deemed reasonable for officers to use that type and degree of non-deadly force necessary to bring a subject whom the officer intends to arrest or capture quickly under control.
4. Officers will use only approved weapons unless circumstances exist which pose an imminent threat to the safety of the officer or the public requiring the immediate use of a non-approved weapon to counter such a threat. This provision should not be construed as authorizing officers to carry a non-approved weapon.
5. Any modification to approved weapons must be authorized by the department through the qualification process.
6. Displays of Firearms

Harris County Constable Precinct Five

- a. Firearms may be drawn and held in a position that is not readily visible when it is reasonably anticipated that they may be required.
- b. Firearms may be brought to the ready position when there is cause to believe there is a threat to life, or serious bodily injury or in self-defense.

7. Threatening the Use of Force - an officer may announce to another his or her intention to use force that may reasonably be necessary under the circumstances.

E. Specific Rules Relating to the Use of Specific Weapons

1. Impact Weapons (Refer to S.O.P. 200-2.15 & 200-2.19)
 - a. Impact weapons should be used only where efforts involving the use of less force have failed or where it reasonably appears that such methods would be ineffective if attempted.
 - b. Deputies should not intentionally target the head, neck, groin, spine, or sternum when using an impact weapon unless deadly force circumstances are present.
 - c. Officers striking another person with an impact weapon should attempt to strike, if possible, bodily areas likely to result only in incapacitation. These areas include major muscle mass groups such as the forearms, thighs, calves, etc.
 - d. Impact Weapons currently include but are not limited to the Less Lethal Shotgun and the Expandable Baton.

2. Chemical Agents

The provisions governing non-deadly force will govern the use of chemical agents. Only chemical agents that are approved will be used. (Refer to S.O.P 200-2.18)

- a. Officers will exercise reasonable care to ensure that only intended persons are sprayed or otherwise subject to the application of chemical agents.

Harris County Constable Precinct Five

- b. Chemical agents will not be applied to any person for the purpose of effecting punishment.
- c. First aid or medical attention will be provided to all persons sprayed with chemical agents.

F. Duty to Render Aid

- a. Deputies shall ensure that any person injured or believed to be injured as a result of the use of force, receive appropriate first aid and/or professional medical attention.
 - i. The injuries, or possible injuries, and the treatment administered shall be included in the appropriate report.
 - ii. Whenever a subject has visible injuries as a result of a use of force, or complains of injuries as a result of use of force, the deputy shall
 - 1. Call E.M.S.
 - 2. Document the incident in the appropriate report.

SPECIAL EMPHASIS

It is our policy that before being authorized to carry a firearm, all officers shall receive training and instruction with regard to: the proper use of deadly force; the agency's policies and state statutes with regard to such force; and be provided with copies of said policies and statutes. Such training and instruction shall continue throughout the officer's duty career and on an annual basis and that any suspected deviation of such policy or law be immediately reported by any personnel having knowledge of such.



OFFICE OF
Glen Cheek, Constable Precinct 5
HARRIS COUNTY, TEXAS

TO: DEPUTY R. FELIX
BADGE #968

DATE: MAY 18, 2005

FROM: M. COLEMAN
CAPTAIN

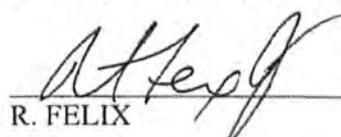
SUBJECT: SUSPENSION

THE INVESTIGATION REGARDING FAIL TO COMPLETE TIME SHEETS HAS BEEN COMPLETED.

THE INVESTIGATION REVEALED THAT YOU WERE NEGLIGENT IN FAILING TO COMPLETE SEVERAL TIME SHEETS. YOU HAVE HAD AMPLE TIME TO CONFORM TO THE REQUIREMENT IN COMPLETING A TIME SHEET.

THEREFORE, YOU ARE TO BE SUSPENDED FOR 1 DAY FROM DUTY ON THURSDAY, JUNE 9, 2005. ANY FURTHER SUCH BEHAVIOR WILL RESULT IN MUCH MORE SEVERE DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION

YOUR SIGNATURE AFFIXED HERETO INDICATES THAT YOU HAVE BEEN NOTIFIED OF THIS ACTION.


R. FELIX


M. COLEMAN
CAPTAIN



17423 Katy Freeway, Houston, Texas 77094-1311* Phone 281-492-3600

SCANNED

HC/BARNES-1729



OFFICE OF

Glen Cheek, Constable Precinct 5

HARRIS COUNTY, TEXAS

TO: DEPUTY R. FELIX
BADGE #968

DATE: AUGUST 8, 2006

FROM: M. COLEMAN
CAPTAIN

SUBJECT: SUSPENSION

THE INVESTIGATION REGARDING THE INCIDENT ON JUNE 20, 2006, HAS BEEN COMPLETED.

THE INVESTIGATION REVEALED THAT YOU DIDN'T UTILIZING YOUR MICROPHONE AS REQUIRED, ACCORDING TO POLICY AND PROCEDURES FOR THE MOBILE VISION IN CAR VIDEO SYSTEMS DATED MAY 3, 2004, SECTION 5 FIELD OPERATIONS C. **"THE DEPUTIES SHALL ACTIVATE THE CAMERA SYSTEM IN ANY SITUATION THAT THEY FEEL MAY REQUIREVIDEOTAPE EVIDENCE IN A CRIMINAL OR INTERNAL AFFAIRE INVESTIGATION".**

THEREFORE, EFFECTIVE TUESDAY, AUGUST 22, 2006 YOU WILL BE SUSPENDED FOR ONE (1) DAY. ANY FURTHER SUCH BEHAVIOR WILL RESULT IN MUCH MORE SEVERE DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION.

DURING THE SUSPENSION YOU ARE NOT PERMITTED TO REPRESENT YOURSELF AS A PEACE OFFICER. FURTHERMORE, EXTRA EMPLOYMENT DURING SUSPENSION IS DISALLOWED.

YOUR SIGNATURE AFFIXED HERETO INDICATES THAT YOU HAVE BEEN NOTIFIED OF THIS SUSPENSION.

R. FELIX

M. COLEMAN
CAPTAIN

SCANNED

17423 Katy Freeway, Houston, Texas 77094-1311* Phone 281-492-3600



OFFICE OF

Philip Camus, Constable Precinct 5

HARRIS COUNTY, TEXAS

TO: DEPUTY R. FELIX
BADGE #968

DATE: JANUARY 11, 2008

FROM: M. COLEMAN
CAPTAIN

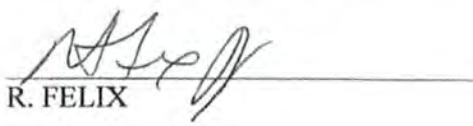
SUBJECT: SUSPENSION

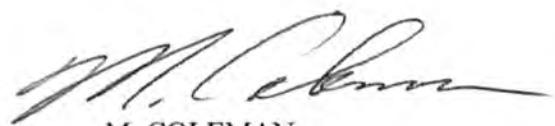
THE INVESTIGATION REGARDING LOST EQUIPMENT (HAND HELD RADAR UNIT) HAS BEEN COMPLETED.

THE INVESTIGATION REVEALED THAT YOU WERE NEGLIGENT AND FAILED TO SECURE THE HAND HELD RADAR UNIT.

THEREFORE, YOU ARE TO BE SUSPENDED FOR 1 DAY FROM DUTY ON THURSDAY, JANUARY 31, 2008. ANY FURTHER SUCH BEHAVIOR WILL RESULT IN MUCH MORE SEVERE DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION

YOUR SIGNATURE AFFIXED HERETO INDICATES THAT YOU HAVE BEEN NOTIFIED OF THIS ACTION.


R. FELIX


M. COLEMAN
CAPTAIN



OFFICE OF

Phil Camus, Constable Precinct 5

HARRIS COUNTY, TEXAS

To: Robert Felix
Deputy

Date: April 17, 2013

From: R. Chapa
Captain

Subject: Disciplinary Action
Two – Day Temporary
Suspension

The Administrative investigation regarding you violating department policy on March 1, 2013 has been completed. It has been established that your actions were a violation of S.O.P. 100-2.09. The Discipline Review Board (DRB) recommended a suspension from duty; which has been upheld by the Constable.

Therefore, it is ordered that you be suspended from duty for two (2) working days. The date of suspension will begin May 9, 2013 and extend through May 10, 2013. During the suspension period you are not permitted to represent yourself as a peace officer.

Notice of Temporary Suspension

This temporary suspension will begin on Thursday May 9, 2013 at 0600 hours.

The temporary suspension will conclude on Friday May 10, 2013 at 1400 hours.

This is to acknowledge that I, Robert Felix, being a Deputy with Harris County Constable Pct. 5 on this day have received a copy of a letter of a **two-day temporary suspension** from pay and benefits. By this letter, I am informed of the reason for the **two-day temporary suspension** from pay and benefits.

I am hereby advised that I am not to take any Police action nor carry or wear any department issued equipment (i.e. badge, gun belt, official identification, uniform etc.) during the period of this temporary

SCANNED

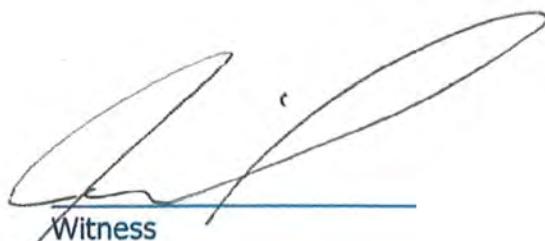
suspension from pay and benefits. This temporary suspension will begin on Thursday May 9, 2013 at 0600 hours and conclude on Friday May 10, 2013 at 1400 hours. In addition, I am hereby informed that I will not be allowed to work any extra employment during the time of this temporary suspension, as provided by General Order 300-7.

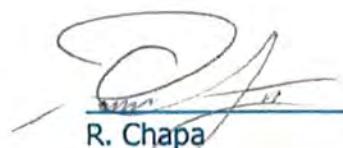
Any further such behavior will result in much more severe disciplinary action, up to and including termination.

Your signature affixed hereto certifies that you have been notified of the disciplinary action against you.

Signed on this 18th day of April, 2013 Time: 10:34 hours


Robert Felix


Witness


R. Chapa
Captain